SAUDI-YEMENI TERRITORIAL SOVEREIGNTY DISPUTES OVER `ASIR, JIZAN, NAJRAN AND THE RUB' AL-KHALI DESERT FRONTIER: LEGAL ANALYSIS OF SOME ASPECTS OF FORMER CLAIMS AND THE FINAL SETTLEMENT UNDER THE 2000 TREATY OF JEDDAH

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In the name of Allah (God), Most Gracious, Most Merciful

Allah (God) Most High Said:

'58. Allah (God) doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For Allah (God) is He Who heareth and seeth all things.'

(Holy Quran, Surat (Chapter) 4:58)

To my country, Kingdom of Saudi Arabia and its wise leaders and great people;

To Yemen and its wise leaders and great people;

To my beloved mother, Mrs. Aisha bint Mohammed Al-Enani;

To my beloved father, H.E. Ret. Amb. Dr. Mohammed bin Omar Al-Madani Al-Idrissi;

To my great professors, H.E. Dr. Muttlab bin Abdullah Al-Nafissa, and
H.E. Dr. Musaid bin Muhammad Al-Eiban;

To my brothers, Dr. Thamer & Abdul Aziz;

To my sister, Dr. Reem;

And in memory of my grandmother, Mrs. Saleha bint Habib Al-Shaibi, and of my uncle, Abdullah bin Omar Al-Madani Al-Sharif Al-Idrissi

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Abstract

This thesis is concerned with the former disputes between Saudi Arabia and Yemen over title to the territories of `Asir, Jizan, Najran and the Rub' Al-Khali Desert frontier. Although the disputes were settled by the 2000 Treaty of Jeddah, it was possible right until the conclusion of that agreement that one of the disputing states could have submitted the disputes to arbitration, in which case the legal claims made by each state would have been highly significant. After examining the political and historical background of the disputed territories, the thesis examines three legal phases of the disputes.

The first phase of the analysis is to identify the nature of claims: were they title or boundary claims or a combination of the two. The analysis shows that the two states asserted claims of both a title and a boundary nature, although the focus of this thesis is primarily on the title claims. It appears from the analysis that the title claims fall into two categories: claims related to international treaties and claims based on title acquisition modes.

The second legal phase of the analysis will therefore concentrate on claims related to the two treaties that were pertinent to the disputes: the 1914 Anglo-Turkish Convention and the 1934 Treaty of Taif. The first treaty arguably delimited a boundary line, the 'Violet Line', located in the Rub' Al-Khali Desert. However, this purported delimitation was the subject of a series of claims and counter-claims between Saudi Arabia and Britain from 1934, until southern Yemen's independence in 1967, which put into doubt the continuing validity of the delimitation. This phase of the analysis considers arguments of Saudi succession to the treaty and the validity of the conclusion of the 1914 Convention by the Ottoman Empire. The second relevant treaty was the 1934 Treaty of Taif which was concluded by Saudi Arabia and northern Yemen following a short war, the two states having failed to settle title claims to `Asir, Jizan and Najran through negotiations. Under the 1934 Treaty, Yemen renounced former title claims to these provinces, which she had formerly raised during the 1927-1934 negotiations. She also agreed with Saudi Arabia on a boundary line. However, from the mid-late 1970s, Yemen resumed its former title claims on various grounds, including the invalidity or termination of the 1934 Treaty. These claims will also be considered in the second phase of the analysis.

The third phase of the analysis considers various arguments based on title acquisition/loss modes recognised by international law, such as cession, conquest, and prescription. It seeks to determine which of the two states had stronger claims to title to the disputed territories.

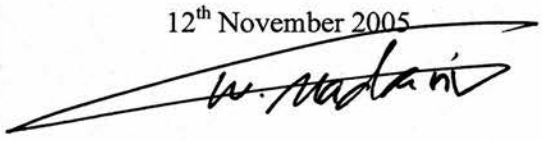
Finally, the settlement in the 2000 Treaty of Jeddah is examined and it is asked to what extent the two states respected or ignored their former legal claims in the political settlement. It will also discuss any problems arising from the application of the 2000 Treaty.

Declaration

I declare that the thesis has been composed by me and that the work is all mine.

Wael Al-Madani.

12th November 2005



Acknowledgements

In writing this thesis, I have benefited from the assistance of several individuals and institutions.

First and foremost, I would like to express my deep indebtedness to my supervisor Professor William (Bill) C. Gilmore, Head of the School of Law, Edinburgh University, for his great and continuous encouragement, constructive criticism and very helpful guidance throughout the writing of this thesis.

I am also very grateful to Professor Alan Boyle whose continued academic assistance helped me in overcoming all obstacles that I faced in the course of writing this thesis. His constructive suggestions concerning my study were also very helpful and much appreciated.

My thanks also go to Mr Adnan Amkhan, who supervised my work in the very early stages, for his constructive suggestions concerning the topic and the structure of this thesis.

I am also thankful to several officials from Saudi Arabia and Yemen whom I met in order to ascertain their views on the Saudi-Yemeni territorial sovereignty dispute. From the Saudi government: Mr Ahmed Al-Ghazawai, Member of the Joint Saudi-Yemeni Land and Maritime Boundaries Committees and Deputy Minister for Technical Affairs at the Saudi Ministry of Petroleum and Mineral Resource; Eng. Adnan Bakhs, from the Saudi Council of Ministers; Brigadier General Abdul Mohsen Al-Faleh, from the Saudi Border Guards and Member of the Joint Saudi-Yemeni Maritime Boundary Delimitation Committee; Brigadier General Abdul Rahman Al-Shehri and Colonel Mohammed Al-Sayel, from the Saudi Military Survey Department and Member of the Saudi-Yemeni Maritime Boundary Delimitation Committee; Cap. Al-Tamimi, from the Saudi Border Guards; and S. Al-Shamlan and O. Al-Kanhal, from the Saudi Military Survey. From the Yemeni government: H.E. Hussein Al-Hubaishi, Advisor to the Yemeni President and Chairman of the Yemeni delegation on the Joint Saudi-Yemeni Maritime Boundary Delimitation Committee; and H.E. Prof. Aziz Al-Zandani, Member of the Joint Saudi-Yemeni Maritime Boundary Delimitation Committee, Professor of Public International Law at San'a University, and Former Minister in the Yemeni Government.

My deep thanks also go to Mr. Richard Schofield, former Director of the Geopolitics and International Boundaries Research Centre at the School of Oriental and African Studies, University of London, as well as Dr Ahmed Al-Ghamdi. Their very experienced insights into the Saudi-Yemeni boundary issues and their academic works with which they provided me were of great help in writing my thesis.

In addition, I wish to thank the librarians at the Edinburgh University Libraries, the King Abdul Aziz Foundation for Research and Archives (Riyadh, Saudi Arabia), the British Public Record Office and India Office (London, UK), the Library of Congress and Georgetown University Law Library (Washington, D.C.) and Harvard University Libraries (Boston, USA) for helping me in accessing and collecting relevant material used in the thesis.

Moreover, I am grateful to the Institute of Diplomatic Studies, Saudi Arabia for relevant study material and the scholarship they provided me for conducting this study. My thanks go to Director General H.E. Ambassador Dr Saad Al-Ammar and the staff members: Mr. Salem Al-Hasani, Mr. Fouad Salawati and Mr. Mohsen Al-Farasani.

In addition, the continued encouragement and kind and sincere wishes of my friends, Mr Yahya Al-Hamrani, Dr Mohammed Y Mattar and Mr Mohammed Badaoud, will remain vivid in my memory.

Last but not least, I find myself incapable to put into words my immeasurable appreciation to my great parents: my mother Mrs Aisha M. Enani and my father, H.E. Ret. Ambassador Dr. Mohammed O Al-Madani Al-Idrissi. Their God-accepted prayers, enormous and continued support of all kinds, and wise advice have been vital in supporting me to finish this long, complicated and sensitive task. In addition, my father's comments, rich information on the subject matter, and suggestions have always enlightened my vision on the issue.

Applicability of the Obligation to Arbitrate under Section 21 of the UN Headquarters Agreement (Advisory Opinion), ICJ Rep. (1947)

Argetina-Chile Frontier Case, 38 ILR (1966)

Burkina Faso v.. Mali Frontier Case, ICJ Rep. (1986)

Case Concerning the Continental Shelf (Libya v. Tunisia), ICJ Rep. (1982)

Chamizal Arbitration (Mexico v. United States), 2 RIAA (1911)

Clipperton Islands Arbitration, 2 RIAA (1931)

Delimitation of the Polish-Czechoslovak Frontier (Question of Jaworzina) PCIJ Rep. Ser. B, no. 8 (1923)

Dubai v. Sharajah Border Arbitration, 91 ILR (1981)

Eastern Greenland Case, PCIJ Rep., Ser. A/B, no. 53 (1933)

Eritrea v. Ethiopia Boundary Commission Decision, PCA (2002)

Eritrea v. Yemen Arbitration, PCA (1998)

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Island of Palmas Case (The Netherlands v. United States), 2 RIAA (1928)

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Territorial Dispute (Libya v. Chad) ICJ Rep. (1994)

Treatment of Polish Nationals and Other Persons of Polish Origin and Speech in the Danzig Territory, PCIJ Rep., Ser. A/B, no. 44 (1932)

Western Sahara Case (Advisory Opinion), ICJ Rep. (1975)

Venezuela-British Guiana Boundary Dispute, the British Case (1898)

This thesis is concerned with the disputes between Saudi Arabia and Yemen over title to four regions: `Asir, Jizan, Najran and the Rub' Al-Khali Desert. A dispute first arose in 1927 between Saudi Arabia and the then northern Yemeni Kingdom over claims to `Asir, Jizan and Najran. This was followed by a further dispute in 1934 over the Rub' Al-Khali Desert frontier between Saudi Arabia and Britain, later succeeded by southern Yemen in 1967. In 1990 northern and southern Yemen unified and the disputes were thereafter between Saudi Arabia and the Republic of Yemen.

In 1992, Saudi Arabia and Yemen decided to negotiate a settlement of their dispute over the title and boundary of these four territories, as well as settling other disputes regarding claims to title to islands within their maritime zones which had not yet been delimited.[1] After eight years of painstaking diplomacy, difficult negotiations, and military skirmishes between the police and military forces of the two states, Saudi Arabia and Yemen were successful in reaching a final and comprehensive settlement for these disputes in the Treaty of Jeddah, signed on the 12th June 2000.[2]

During the negotiations from 1992 to 2000, Yemen frequently made calls to take the dispute to arbitration if negotiations failed, as the two states had agreed they would do in both the 1934 Treaty of Taif and the 1995 Memorandum of Understanding. This thesis examines the Saudi and Yemeni claims and arguments that could have been made if arbitration had taken place.

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[1] The dispute over title to the islands and over the maritime boundary delimitation will not be examined in the thesis.

[2] It should be said that the author started this study before Saudi Arabia and Yemen had settled the dispute.

Chapter 1 provides a short historical, political and geographical introduction to the disputed territories. This chapter provides an important factual foundation for the legal analysis in chapters 2, 3 and 4.

Chapter 2 is devoted to an analysis of the nature of the dispute over `Asir, Jizan, Najran and the Rub' Al-Khali Desert. It examines the Saudi-Yemeni disputes in light of the concept of a 'dispute' in international law and attempts to identify whether these disputes are as of a title or a boundary nature, or indeed a combination of the two. Chapter 2 concludes that, although the disputes appeared to concern the delimitation of a boundary, they also displayed important characteristics of a title dispute. It is clear from the available resources on the title dispute that the two states disagreed on two central legal issues. The first was the validity, application and interpretation of two international treaties: the 1914 Anglo-Turkish Convention and the 1934 Treaty of Taif. The second legal issue involved the legal modes of title acquisition that were applicable to the dispute. Both states put forward arguments justifying their claims to the disputed territories, or denying such title, relying on a treaty that favoured them. In this sense, chapter 2 sets the framework for the subsequent analysis in chapters 3 and 4.

Chapter 3 deals with claims and arguments over the validity and application of both the 1914 Anglo-Turkish Convention which dealt with territorial sovereignty of the Rub' Al-Khali Desert and the 1934 Treaty of Taif which concerned territorial sovereignty over `Asir, Jizan and Najran. Since the delimitation stipulated in the 1914 Anglo-Turkish Convention did not support the Saudi claim to title to massive areas of the Rub' Al-Khali Desert, including tribal lands, Saudi Arabia has challenged the validity and the legal impact of the treaty. On the other hand, prior to the conclusion of the Treaty of Jeddah, it was apparent that Yemen would revive the old British argument that the 1914 Anglo-Turkish Convention constituted the basis for Yemen's title claim. With regards to the 1934 Treaty of Taif, Yemen raised various arguments and claims challenging the validity of the treaty, regardless of the fact that the Treaty was signed and ratified in 1934 and provided for the delimitation and mutual demarcation of the border. Yet, Yemen argued in favour of re-delimitation of its border to include the territories of `Asir, Jizan and Najran which are the homelands of several tribes sharing Yemeni cultural heritage. Even though the 1995 Memorandum of Understanding provided that the two states had agreed to continue negotiations, Yemen continued to indicate a tacit opposition to the use of the Treaty of Taif as a basis for the negotiations until the President of Yemen declared in 2000 that the dispute had been ultimately resolved in a

'final and comprehensive' manner by the Treaty of Jeddah. Chapter 3 examines the claims of Saudi Arabia and Yemen in light of the relevant customary and codified rules of international law on treaties.

Chapter 4 discusses the claims and arguments concerning the disputed territories from the perspective of 'title acquisition modes'. In order to justify their arguments, both Saudi Arabia and Yemen presented their claims or counter-claims under different title acquisition/loss modes, which included conquest, cession, historical title, and renunciation of title. Since the applicability of title acquisition modes is determined by the legal status of the claimed territory, it is pertinent to first examine the legal status of the disputed territories; are they *terra nullius* or state territory?

It is noted that the claims, counter-claims and arguments, examined in chapters 3 and 4, are revealed expressly or tacitly in numerous official documents which the author managed to access at the British Public Record Office (PRO) or the India Office. These documents provided substantial information on the emergence and developments of the dispute over delimitation of Saudi-southern Yemeni frontier in the Rub' Al-Khali Desert. The only official documentary Saudi source was the 1934 Green Book which provided ample substantial information on the emergence of the Saudi-northern Yemeni dispute over `Asir, Jizan and Najran.[3] There were no further Saudi official documents which covered the dispute to `Asir, Jizan, Najran and the Rub' Al-Khali Desert which have been placed in the public domain. The author was not able to access any official Yemeni archives. This was due, in large measure, to the political atmosphere existing between the two states while they negotiated the final settlement of the dispute. A major reason for this secrecy was an anticipated recouse to arbitration in the event of the failure of those discussions; the restrictions on accessing the information of either party being aimed at conserving important material which could have been useful to the other party in legal proceedings. However, scholarly writings have helped, to some extent, to address the gap of information on this matter.

Finally, Chapter 5 will briefly examine the nature of the settlement in the Treaty of Jeddah signed in Saudi Arabia on the 12th June 2000. It examines to what extent the two states

[3] The Green Book includes records of the negotiating sessions held between the two delegations and cables exchanged between the two monarchs in relation to the claims. It covers the period from the emergence of the dispute until the outbreak of war in 1934, which was settled by the Treaty of Taif. See 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya', (1934) *The Green Book (In Arabic);* all translations in this work are by the author.

respected or ignored the former legal claims to the disputed territories in the terms of the new settlement as seen in the final boundary delimitation and demarcation. Additionally, progress in the final demarcation of the boundary is briefly discussed followed by consideration of some of the difficulties which have emerged in the application of the Treaty of Jeddah.

Chapter 1

History and context of the territorial sovereignty disputes

1. Introduction

An examination of the Saudi-Yemeni territorial sovereignty disputes over `Asir, Jizan, Najran and the Rub' Al-Khali Desert requires some knowledge of the politics, geography and history of the area. This chapter will consider these issues, as well as some of the other motives behind the dispute.

2. Emergence of the disputes

When the territorial sovereignty disputes between Saudi Arabia and Yemen first arose, Yemen was divided into two main parts: north and south. Northern Yemen was ruled by a royal Imamate regime which replaced the Ottoman Empire in 1918. Southern Yemen, under the control of the British, was itself divided into the Colony of Aden and two protectorates.[1] The following sections will give an overview of the origins of these two territorial sovereignty disputes.

(a) Saudi-northern Yemeni territorial sovereignty disputes

The Saudi-northern Yemeni territorial sovereignty disputes first arose in 1926-27 following the merger of the Idrisi State, once located in some parts of `Asir and Jizan, with Saudi Arabia by virtue of the 1926 Saudi-Idrisi Treaty of Makkah.[2]

The dispute started over definitions of the Saudi-northern Yemeni territorial sovereignty limits and developed into disputes over title to `Asir, Jizan and Najran. Philby writes that in 1931/32 the Yemeni forces invaded Najran as a result of Yemen's desire to annex it, in spite

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[1] See map in Appendix 2.1.

[2] See Appendix 1.8; see Schofield's lecture to the British-Yemeni Society on 31 March 1999, text found at http://www.al-bab.com/bys/articles/schofield00.htm (last visited on 28th October 2004).

of Saudi Arabian proposals that Najran should be a buffer zone.[3] Philby explains the developments in the dispute over Najran between 1926/7 until 1931/32:[4]

> 'It was Imam Yahya who took the initiative with a serious of expansionist pinpricks in this area to provoke Ibn Saud to positive action. The latter had, after conquest of the Hijaz, deployed his troops southward to watch the activities of his neighbour, while in the case of Najran, a large oasis with an unsavoury reputation for turbulence, he was in principle disposed to leave it to its independence, at any rate for the time being, as a buffer between himself and the Yaman [Yemen] on the desert side of the mountain barrier. With the troops of the two parties roving about along an undefined boundary, frontier incidents were inevitable; and in one such case the Saudi troops were clearly in the wrong in occupying the Village of Aru, though at that time (1931) there were no maps available to either side to determine clearly the rights or wrongs of the local dispute. This sparring on the relatively minor issues led progressively to a clarification of the Yemen objective, which was Najran itself. A Yamani [Yemeni] force descended on the oasis during the winter of 1931/2 to confront Ibn Saud with a *fait accompli*. To make their occupation palatable to the inhabitants of the oasis, they proceeded to harry those known to be unfriendly and to lay waste to their dwellings and palm-groves. Their complaints forced Ibn Saud to action; and Khalid ibn Luwai [a Saudi army commander] hastened to the scene with a large army of *Ikhwan* in the spring of 1932. The Yamani [Yemeni] troops proved ineffective against this challenge and, after some desultory fighting, withdrew whence they had come. The Najran issue was thus settled for good; and a Saudi deputation visited San`a [northern Yemeni capital] to negotiate a general settlement of the frontier problem with the Imam, who, however, adopted an evasive attitude and obviously had no intention of agreeing to an accommodation on the basis of the Saudi claim.'

This dispute developed into a Saudi-Yemen war[5] ended by the 1934 Treaty of Taif.[6] As a result of the war, Yemen was forced to recognise Saudi title to `Asir, Jizan and Najran.

Although the Treaty of Taif purported, *inter alia*, to settle the disputes over title to `Asir, Jizan and Najran in favour of Saudi Arabia, as well as organising the allocation, delimitation and demarcation of parts of the Saudi border with then-northern Yemen, Yemeni officials and scholars have, since unification in 1990, continued to question, either tacitly or expressly, Saudi title to `Asir, Jizan and Najran, as well as the validity of the Treaty of Taif.[7] Until the two states reached a final conclusion for the disputes through the Treaty of Jeddah

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[3] See chapter 2.4 for a discussion of the Saudi-Yemeni negotiations up to 1934.

[4] Philby, *Arabian Jubilee* (1952) pp. 184-185.

[5] On the war, Philby writes: 'After intervention from Britain, France and Italy sent warships to Hudaidah to force Faisal to stop advancing in Yemen and to force Saudi Arabia to negotiate a settlement with Yemen. Riyadh ordered Faisal not to advance to Sana, the Yamani capital ... So the three-weeks' war ended in a truce to allow further negotiations, pending whose result Fasial and his army remained at Hudaidah. The Imam Yahya, seriously alarmed by the astonishing collapse of his army before the vigour of the Wahhabi thrust, agreed to negotiate, and nominated one of his principle lieutenants, Saiyid [Sayyed] Abdullah ibn Al Wazir, as his plenipotentiary for the purpose.'; Philby, *Arabian Jubilee*, pp. 185-186. See also Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934)* (1987) pp. 229-246; Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic)* (1968) pp. 275-276.

[6] A full discussion of the negotiation of the Treaty of Taif appears in chapter 2.

[7] Examined in chapter 3.

agreed on the 12th June 2000,[8] the Yemeni President did not totally accept the applicability of the Treaty of Taif and he retained the option of pursuing arbitration as provided for in the 1995 Saudi-Yemeni Memorandum of Understanding.[9] However, it is noted that the disagreements at that stage of the dispute were mostly about the re-definition of locations of missing boundary pillars defined and demarcated under the Treaty of Taif.

(b) Saudi-southern Yemen territorial sovereignty disputes

The disputes between Saudi Arabia and southern Yemen started in 1934, at a time when southern Yemen was still under British protection. Philby explains:[10]

> 'With the establishment in 1926 of a protectorate over the Idrisi principality of lowland `Asir, ...Ibn Saud (King Abdul Aziz of Saudi Arabia) had expanded his realm to what are in effect its present limits. Beyond the Empty Quarter lay the anarchic territory of Hadhramaut [or Hadramawt], which did not tempt him, and had not yet begun to tempt the British authorities in Aden, or to stir the cupidity of the Yaman [Yemen]. The latter itself remained the only sphere likely to demand the attention of the Wahhabi [or Saudi] monarch in view of the hazy frontier which separated it from his own territory and of the known ambition of the Imam Yahya to include Najran and some of the Idrisi [or Idrissi] territory in his realm.'

Saudi Arabia denied that its border with neighbouring territories under the British regime had already been defined, disputing Britain's view of former delimitations contained in the 1913-14 Anglo-Turkish Conventions[11] which set out, *inter alia*, two boundary lines - the Blue and Violet lines respectively. Of the two lines created by Anglo-Turkish Conventions, only the Violet line of the 1914 Convention is applicable to the Saudi-Yemeni territorial sovereignty disputes, as the Blue Line dealt with an area between the Ottoman province of Najd and the British-protected Arabian territories in the Persian Gulf area.[12] [13]

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[8] Examined in chapter 5.

[9] See Appendix 1.13.

[10] Philby, *Arabian Jubilee,* p. 184.

[11] See Appendices 1.1 and 1.2.

[12] See British Government Restricted Document, FCO 8/370 – 80017, January 1963, Foreign Office, London, which provides:

'1. The boundaries of the then Aden Protectorate were the subject of an Anglo-Turkish Convention concluded in London on 9 March 1914 and ratified in London on 3 June of the same year. Article I of this Convention confirmed and ratified Anglo-Turkish Protocols of 1903, 1904 and 1905. These Protocols determined in detail the frontier between the Aden Protectorate and the then Turkish Province of the Yemen from Husn Murad, a point on the coast opposite Perim Island, as far as a point on the Wadi Bana. This sector of the frontier was marked on the ground at the time of the investigations in 1903 to 1905, and became and remains well-known to all concerned in the areas it traverses.

2. Under Article III of the Convention it was agreed that from this point on the Wadi Bana the limits of Ottoman territory should follow a straight line to the North-East with an inclination of 45° into the desert of the Empty Quarter, until it reached an intersection with the North and South line which formed the Eastern frontier of the then Turkish Province of Nejd. The due 45° North-East line is known as the Violet line, and the North and South line as the Blue line.

In 1923 the Treaty of Lausanne was signed between Turkey and the Allies under which Turkey renounced title to all territories outside Turkey, including Arabia.[14] By virtue of this treaty, emerging states in the area, including Saudi Arabia and northern Yemen, succeeded to the Ottoman title to these territories.

In 1935 Saudi Arabia claimed a line, known as the 'Hamza line', as the limits of Saudi territory in the eastern and southern Arabian Peninsula; that line runs south to include most of the Rub' Al-Khali Desert, absorbing a significant portion of the Eastern Aden Protectorate.[15] This line was protested by the British who proposed their own line in 1955.[16]

Southern Yemen gained independence from Britain in 1967 but southern Yemen and Saudi Arabia were still not able to reach agreement on the location of the boundary in the Rub' Al-Khali Desert.

Then, on the 22nd May 1990 northern Yemen[17] and southern Yemen[18] unified.[19] As a result of unification, all the above territorial sovereignty disputes were pursued between two states: Saudi Arabia and the Republic of Yemen.

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3. As a result of the 1914-18 war and the Treaty of Lausanne of 1923 Turkish sovereignty in Arabia disappeared, and the successor Arab States of the Yemen and Saudi Arabia did not thereafter recognise the validity of the Anglo-Turkish Convention of 1914. Her Majesty's Government nevertheless adhered to the view that the borders laid down in the Convention were still, so far as they were concerned, the legal frontiers of the Aden Protectorate (now the People's Republic of Southern Yemen) and the limits of former Ottoman territory unless and until those frontiers should be altered by mutual agreement between Her Majesty's Government and the successor Arab States concerned.'

[13] See Appendix 2.2 for a map showing these two lines.

[14] See the section on the power of the Ottoman Empire to conclude the 1914 Convention, in chapter 3.

[15] Schofield, 'The International Boundary between Yemen and Saudi Arabia', in Detalle (ed.), *Tension in Arabia: The Saudi-Yemeni Fault Line* (2000) p. 24.

[16] See chapter 2.5 for a discussion of the various lines proposed by Saudi Arabia and Britain.

[17] Then the Yemen Arab Republic or YAR, the name of northern Yemen following the revolution against the royal government in 1962.

[18] Then the People's Democratic Republic of Yemen or PDRY, the name of southern Yemen since independence from Britain in 1967.

[19] 'North Yemen became independent of the Ottoman Empire in 1918. The British, who had set up a protectorate area around the southern port of Aden in the 19th century, withdrew in 1967 from what became South Yemen. Three years later, the southern government adopted a Marxist orientation. The massive exodus of hundreds of thousands of Yemenis from the south to the north contributed to two decades of hostility between the states. The two countries were formally unified as the Republic of Yemen in 1990.' See *CIA's Factbook 2004*: http://www.cia.gov/cia/publications/factbook/geos/ym.html (last visited on the 28th October 2004).

3. Geography

Saudi Arabia, Yemen and the disputed territories of `Asir, Jizan, Najran and the Rub' Al-Khali Desert are located in the Arabian Peninsula.[20] The total area of the unified Yemen after delimitations of its land boundaries with Oman and Saudi Arabia is 527,970 sq km,[21] while Saudi Arabia's total area after settlement of all boundaries including the border with Yemen is 1,960,582 sq km.[22] Saudi Arabia is divided into 13 provinces[23] and Yemen is divided into 19 governorates.[24] Saudi Arabia is bounded by Yemen in the southwest and south[25] and the Rub' Al-Khali Desert forms a natural barrier or or frontier[26] between the two countries.[27] The total length of the Saudi-Yemeni land boundary after delimitation in the Jeddah Treaty is 1,458 km.[28] In addition Saudi Arabia and Yemen both have borders with Oman. The Red Sea also lies to the west of Yemen and Saudi Arabia.

(a) `Asir and Jizan

`Asir and Jizan are in the south-western half of the Arabian Peninsula between Saudi Arabia and Yemen.[29] The Saudi government divided this area into three administrative provinces: `Asir, Al-Baha and Jizan.

`Asir is a large region located to the north of Sada. Considering the separate administrative definition of `Asir from Jizan and Al-Baha, one source defines the geography of present-day `Asir thus:[30]

> ''Asir is a province of Saudi Arabia, located in the south-west of the country. It has an area of 81,000 km² and a population of 1,563,000. It shares a short border with Yemen. Its capital is Abha. Other towns include Khamis Mushayt and Qal'at Bishah.'

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[20] See Appendix 2.3 for a map depicting location of Saudi Arabia, northern and southern Yemen and the disputed territories in the Arabia Peninsula.
[21] http://www.cia.gov/cia/publications/factbook/geos/ym.html
[22] http://www.cia.gov/cia/publications/factbook/geos/sa.html
[23] Al Bahah, Al Hudud ash Shamaliyah, Al Jawf, Al Madinah, Al Qasim, Ar Riyad, Ash Sharqiyah (Eastern Province), 'Asir, Ha'il, Jizan, Makkah, Najran, and Tabuk. For a geographical description of Saudi Arabia, see Twitchell, *Saudi Arabia with an Account of the Development of Its Natural Resources* (1947) p. 3.
[24] Abyan, 'Adan, Ad Dali', Al Bayda', Al Hudaydah, Al Jawf, Al Mahrah, Al Mahwit, 'Amran, Dhamar, Hadramawt, Hajjah, Ibb, Lahij, Ma'rib, Sa'dah, San'a', Shabwah, Ta'izz.
[25] Nyrop (ed.) *Saudi Arabia: A Country Study* (1984) p. 63.
[26] See chapter 2.2 on the differences between the terms 'boundary' and 'frontier'.
[27] See maps in Appendix 2
[28] See Appendix 2.5, reproduced in Al-Ghamdi, *The Saudi-Yemeni Boundary: towards a Peaceful Resolution* (1996) p.20. See also http://www.cia.gov/cia/publications/factbook/geos/sa.html
[29] Formerly northern Yemen.
[30] See also http://reference.allrefer.com/country-guide-study/saudi-arabia/saudi-arabia24.html (last visited on 1st November 2004).

Among the most famous mountains in `Asir are Jabal[31] al-Thora, Jabal Dola and Jabal Tahalel, standing at 12,000 feet. Its best known cities are Dharan, Abha, Mahayel, Abu-Arish, Qunfuthah, Al-Leith, Bishah, and Khamis Mushait.

Jizan is a well-known seaport in `Asir[32], located 80 kilometres from Midi and 4 kilometres to the north of Sabia, the former capital of the Idrisi State.[33] However, it is also the name of an administrative province, created by Saudi Arabia. Therefore, although Al-Zulfa[34] and Twitchell[35] defined Jizan within `Asir, it has been stated elsewhere:[36]

> 'Jizan is a province of Saudi Arabia, located along the southern coast, just north of Yemen. It has an area of 17,000 km² and a population of 1,071,500 (1999). Its capital is Jizan.'

Of the three Saudi administrative provinces, Jizan enjoyed a special status because it was the location of the Idrisi capital.

Al-Zulfa's and Twitchell's definitions of `Asir also include Al-Baha province, located between the northern part of `Asir and Hijaz.[37] In contrast, some sources define Al-Baha as a province separate from `Asir. Yemen and Saudi Arabia have also disputed whether title to Al-Baha was included within title to `Asir.

This thesis assumes that for the purposes of the Saudi-Yemeni territorial sovereignty dispute that Al-Baha is included in title to `Asir, whereas Jizan, although geographically part of `Asir, is treated separately because it was explicitly named in Saudi-Yemeni documents due to its special status.[38]

Geographical writings of Muslim scholars during the middle ages considered `Asir (including Jizan) and Najran as parts of Yemen.[39] That it was generally accepted that `Asir is

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[31] Jabal means mountain.
[32] See Al-Thagafiyah (Ed.) *Yemen Encyclopaedia 2,* p. 656, which says that Jizan, Sabia (capital of Idrisi state) and Abu Arish are cities of `Asir Province.
[33] *Note by Colonel T. C. Fowle, C.B.E. (P.Z.6039/34),* British Foreign and Commonwealth Office, London (1934) pp. 444-445.
[34] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State* (1995) p. 19.
[35] Twitchell, *Saudi Arabia with an Account of the Development of its Natural Resources*, pp. 4-5.
[36] http://www.wordiq.com/definition/Jizan_province (last visited on 1st November 2004.)
[37] See references in footnotes 36 and 37.
[38] See chapter 2 for a discussion on the negotiations between Saudi Arabia and Yemen from 1927-1934.
[39] See Bidwell, *The Two Yemens* (1983) pp. 1-9. See also Al-Hamadani, *A Description of the Arabian Peninsula (in Arabic)* (1953); Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic)* pp. 17-30.

geographically part of Yemen is well illustrated by Al-Masuodi, a prominent Islamic geographer of the tenth century.[40]

Contemporary maps continue to treat `Asir as part of Yemen.[41] `Asir (including Jizan) is defined by Al-Zulfa as the area located between Dhahran and Zahran and from Al-Sh`af[42] to Al-Sa`af[43].[44] On the geography of ''Asir', Twitchell writes:[45]

> ''Asir (difficult) is the name of the second province (of the Saudi provinces which are disputed by Yemen), lying to the south of Hijaz and extending down to the approaches of the independent kingdom of the Yaman (or northern Yemen before unification). Including a coastal plain (Tihama) along the Red Sea - 200 miles in length and up to 40 miles wide – the area is densely populated in the river-flooded regions. In such localities as Raqaba, Gahama and Khor al-Birk, lava flows have reached the sea. And, as in the Hijaz, the mountains on the eastern side of Tihama are extremely rugged, rising to an elevation of over 9,000 feet. There are not many trails in `Asir, where even a donkey finds it hard to ascend the plateau, and the traveller is only too aware that "difficult" is the proper designation for the province.[46] Gently sloping to the east, the mountains are usually terraced to prevent soil erosion and permit cultivation.
>
> The `Asir landscape is akin to certain parts of the Yaman (Yemen) in the south; it is rainfall, exceeding the 4-inch average of most of Saudi Arabia, must attain, if one were to judge by the luxuriant vegetation, an annual 10 to 12 inches. This relatively high rate is confirmed, moreover, by the prevalence of a unique type of building in the capital, Abha, where the countryside of `Asir begins to level off at 7,000 to 6,000 feet. Good-sized farming areas, parallel to the mountains, extend down the river valleys, reaching Najran and the Empty Quarter. The eastward inclination of the mountain slopes down to about 4,000 feet at Najran, and continues its descent until at Bisha, near the northern corner of `Asir, it is 3,600 feet. At the edge of the great desert near Najran, an aneroid barometer indicates 3,500 feet.'

Agriculture is one of the main sources of income in `Asir and Jizan. For example Bisha is famous for its dates, which is also the main product of Saudi Arabia.[47]

(b) Najran

Najran, located to the east of `Asir, to the west of the Rub' Al-Khali Desert, and to the northeast of the Yemeni provinces of Sadah, Marib, Sana and Shubwah,[48] is composed of a

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[40] Al-Masuodi, *Murooj Al-Thahab Wa Ma`Aden Al-Jawher (in Arabic)*, (1982) vol. 1, p. 403; Mo`asasat Al-Afif Al-Thagafiyah (ed.) *Yemen Encyclopaedia 2 (in Arabic)* (1992) p. 656 and p. 993 and *Note by Colonel T. C. Fowle, C.B.E. (P.Z.6039/34),* p.444.

[41] For instance, see Appendix 2.4 Al-Dhamari's map.

[42] Meaning 'tops of mountains.'

[43] Meaning 'palm trees located in hot areas.'

[44] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State*, p. 19.

[45] Twitchell, *Saudi Arabia with an Account of the Development of its Natural Resources,* p. 4-5. On the geology of the region, see Nyrop (ed.), *Saudi Arabia: A Country Study*, p. 64.

[46] That was in 1947. However the region has since witnessed a vast modernisation of the network of roads and highways.

[47] Twitchell, *Saudi Arabia with an Account of the Development of Its Natural Resources,* p. 17.

[48] See Appendix 2.3. , map showing the location of Najran.

valley rich in water resources, which makes it a distinctive agricultural region.[49] It is said that, geographically, Najran is one of Yemen's regions, located 213 miles from San'a, the Yemeni capital.[50] It is named after Najran bin Zaidan bin Sbaa bin Yashjub bin Yarob bin Qahtan, one of the grandsons of Qahtan, the grandfather of all Yemeni and `Asiri tribes.[51]

(c) Rub' Al-Khali Desert

The Rub' Al-Khali Desert (also known as the Empty Quarter Desert) is located in the south- and south-east of Arabia and bordered by the Saudi territory of Najd, the United Arab Emirates, Oman, and the Yemeni Hadramut. The Rub' Al-Khali is one of the world's most unpopulated deserts and water resources are scarce. It has been described as follows:[52]

> 'The Rub Al-Khali, one of the most forbidding sand deserts in the world and, until the 1950s, one of the least explored. The topography of this huge area, covering more than 550,000 square kilometres, is varied. In the west the elevation is about 600 metres, and the sand is fine and soft; in the east the elevation drops to about 180 metres, and much of the surface is covered by relatively stable sand sheets and salt flats. In places, particularly in the east, longitudinal sand dunes prevail; elsewhere sand mountains as much as 300 metres in height form complex patterns. Most of the area is totally waterless and uninhabited except for a few wandering tribes.'

4. Political history of the disputed territories

Various royal families and two foreign powers have shaped the political history of the disputed territories. The principal families are the Imamates and the Saudis. In addition, the families of Idrisi and Al-Aid were involved indirectly as they ruled, at one time, parts of the disputed territories. The two foreign powers are the Ottoman and British Empires who played a crucial role in the emergence of the disputes between Saudi Arabia and Yemen.

(a) The Imamate (898-1962) and the Yemen Arab Republic (1962-1990)

It is agreed by different historians[53] that Al-Hadi, who was a descendant of Prophet Muhammad through his descendant Zayd[54] and a descendant of the Imamate royal family in

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[49] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p. 173.
[50] *Note by Colonel T. C. Fowle, C.B.E. (P.Z.6039/34)*, p.655.
[51] See section 5 on population and tribes of the disputed areas, below.
[52] Nyrop (ed.), *Saudi Arabia: A Country Study,* pp. 69-70.
[53] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* p. 239. Bidwell, *The Two Yemens,* p. 9, who writes 'Al-Hadi arrived in 893, but his rigid insistence on the Shariah (Islamic divine law) proved so unpopular that after a short while he returned to the Hijaz. However, the tribes found their quarrels impossible to resolve, so in 897 they invited him back, thus clearly accepting a religious and indeed political "platform" that would differentiate them from their neighbours. Al- Hadi was clearly a very remarkable man. Like his ancestor Ali [a cousin and son-in-law of Prophet Muhammad] and his descendant Ahmad, the Imam [Yahya] of the 1950s, his physical strength was legendary.'

Yemen, arrived in Sada in northern Yemen for the first time in the 890s. Sharaf Al-Deen has stated that the Imamate[55] family ruled parts of Yemen as a royal family from 898 until the republican revolution in northern Yemen on the 26th September 1962.[56]

During their weaker moments, the Imams ruled northern Yemen under the influence of a foreign Islamic power such as the Ottoman Empire. However, Schofield notes that between 1630 and 1728, the Yemeni territory comprised northern Yemen, southern Yemen, and the disputed territories of `Asir, Jizan, and Najran as well as the Rub' Al-Khali Desert as part of a "Greater Yemen" forming one territory with one culture:[57]

> 'The Cultural unit Yemen would be recognised and depicted cartographically on European maps as early as the seventeenth century. "Natural" or "historical" Yemen (*Bilad al-Yemen*) found its extensive territorial expression in modern history for the one hundred year period from 1630 to 1728. This "Greater Yemen" embraced a broad sweep of territory from Hali on the Red Sea to the Kuria Muria islands in the Arabian Sea to the south-east and included the modern Saudi provinces and localities of `Asir, Najran and Jizan.'

It was the Imamates who ruled Greater Yemen between 1630 and 1728 when Aden, Hadramut and Lahj separated.[58] Two years later in 1730 the Governor of `Asir, broke away establishing his own state based in Abu Arish.[59]

From 1728 until 1962 the Imamates continued to control parts of northern Yemen. Moreover, Al-Wajih stated that the Imamates ruled Jizan[60] in 1712.[61] Abdul-Raheem suggested that the local rulers of Jizan[62] were ruling under the sovereignty or influence of the Imams from 1690 until 1808 when Abu Moosmar joined the first Saudi army and attacked northern Yemen, who were at that time besieged by Saudi forces. However, because they

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[54] Ibid., p. 9. Zayed was an Islamic jurist who established a school for interpretation of Islamic divine law; this school is called Zaydi, and its followers are Zayedis. The Zayedis constitute a major section of the Yemeni population.

[55] The ruler of the Imamate is called 'Imam' and Bidwell explains how the rulers were chosen: 'The Zaydi Imamate has never been purely hereditary: the Imam is elected from within a definite hereditary group. Any descendant of the Prophet with the qualifications of piety, theological learning, generosity, proven military, political and administrative skill might claim the Imamate'; ibid., p. 24.

[56] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* pp. 239-240.

[57] Schofield, *The International Boundary between Yemen and Saudi Arabia,* p. 19.

[58] Al-Asbahi, *The Yemeni Unity...A Promising Arab Example at the Beginning of 21st Century* (in Arabic) p. 3, found at http://www.yemencult.com/mgalatc.html (last visited on 17th December 2003). See also Bidwell, *The Two Yemens,* p. 24.

[59] Ibid., pp. 24-25.

[60] Also known as Al-Mikhlaf Al-Sulaimani. Abdul-Raheem stated that Al-Sulaimani refers to Sulmain bin Turaif who was one of those rulers of the areas in the 4th Century AH. See Abdul-Raheem, *The First Saudi State (1745-1818)*, vol. 1 (1997), p. 173.

[61] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: An Examination of the Dispute over Title under International Law Rules and in Light of British Role Based on Published Documents (in Arabic)* (1999) p. 97.

[62] The Shareif Abu Moosmar family.

were under the 'nominal' sovereignty of the Ottomans, the Imams called for assistance and the Ottomans attacked the Saudi presence in northern Yemen in 1818, freeing the Imams, who resumed power until the Saudi-Imamate conflict resumed in 1927 over title to the disputed territories in `Asir, Jizan and Najran.

Between 1872 and 1919, there was no Imamate presence in Najran because the Ottoman Empire did not rule it.[63]

From 1818 to 1872 the Imams ruled northern Yemen under Ottoman sovereignty until the Ottomans decided to form the Vilayet of Yemen or the District of Yemen. This administrative division included `Asir and Jizan as well as northern Yemen. Later, `Asir and Jizan were separated as a result of political unrest, as Leatherdale explains:[64]

> 'In 1872 the Ottoman Government constituted the Vilayet of the Yemen, with `Asir as one of its constituent *sanjaks*. Increasingly, the Turks were challenged by two separate rebellious chiefs with distinct histories and grievances - the Shiite Imam of the Yemen and the Sunni Idrisi [or Idrissi] of `Asir. Acknowledging the separate causes of the unrest, the Turks imposed political distinctions between `Asir and the Yemen. In 1910 `Asir was detached from Yemeni administration and reconstituted as a completely separate administrative unit, without the status of a *vilayet*, but directly under the central government at Constantinople.'

At this time, the Imams lost their political authority not only over the population of `Asir and Jizan but also over the Sunni population in northern Yemen. Imam Yahya, local ruler of northern Yemen in 1911, signed the Da`an Agreement[65] with the Ottomans. According to this agreement, Imam Yahya could rule over the Zaidi population living in northern Yemen, whilst he in turn recognised Ottoman sovereignty over his territory.

Following the First World War, the Ottomans withdrew from northern Yemen and thus northern Yemen under the Imams gained independence from the Ottomans.[66]

The Imamate forces invaded Abu `Arish and Samtah in 1924.[67] However, they withdrew from Jizan before 1926 when the Idrisi (ruler of Jizan) signed the Treaty of Makkah[68] with the Saudi ruler, King Abdul Aziz.[69]

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[63] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p.173.
[64] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis* (1983) pp. 136-7.
[65] See Al-Thagafiyah (ed.) *Yemen Encyclopaedia 2 (in Arabic),* p. 656; see also text of the agreement in Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* p. 265.
[66] Ibid., p. 271. Also, see section on the Ottomans, below.

In August 1931, Saudi Arabia claimed that the Imamate troops invaded the Aaroo Mountain area between northern Yemen and Jizan.[70] However Philby has expressed the view that the Saudi troops were mistakenly in the wrong place because there was no delimited border between Saudi Arabia and Yemen:[71]

> 'With the troops of the two parties roving about along an undefined boundary, frontier incidents were inevitable; and in one such case the Saudi troops were clearly in the wrong in occupying the village of Aru [Aro], though at that time (1931) there were no maps available to either side to determine clearly the rights or wrongs of the local dispute.'

Nevertheless, this dispute was settled peacefully through arbitration conducted by King Abdul Aziz as the sole arbitrator appointed by Imam Yahya. King Abdul Aziz decided in favour of Imam Yahya.[72] However, in May 1933 the Imamate troops invaded Najran under the pretext of providing law and order to its people.[73] This incursion led the Saudis to deploy troops over the Saudi-Yemeni border on the 14th November 1933.[74] The Yemeni presence ended in Najran after the conclusion of the Saudi-Yemeni Treaty of Taif signed on the 19th May 1934.[75] Since that date there has been no Imamate or any other Yemeni presence in Jizan, `Asir or Najran.

On the 26th September 1962 a revolution occurred in San`a, northern Yemen's capital, and the Imamate presence ended in northern Yemen which then became the Arab Yemen Republic or YAR, under the leadership of Abdullah Al-Salal.[76] Since the 1970s, Yemen resumed its claims to title to the disputed territories, stating that it wanted to reach an agreement that would return Najran, Jizan and `Asir to Yemeni sovereignty.

(b) The Ottoman Empire (1538-1918)

`Asir and Jizan were part of the Ottoman territory in the Arabian Peninsula, from sometime between 1490 and 1540. As a result of fierce competition with the Spaniards, the Portuguese

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[67] Al-Asbahi, *The Yemeni Unity... a Promising Arab Example at the Beginning of 21st Century (in Arabic),* p. 3.
[68] See Appendix 1.8.
[69] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* p. 272.
[70] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in Light of British Role Based on Published Documents (in Arabic),* p. 130.
[71] Philby, *Arabian Jubilee,* p. 184.
[72] See chapter 2.4 for further discussion of this incident.
[73] Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934),* p. 162.
[74] Ibid., p. 170.
[75] See Appendix 1.12.
[76] Al-Asbahi, *The Yemeni Unity... a Promising Arab Example at the Beginning of 21st Century (in Arabic),* p. 4.

and other European powers to control the Red Sea, North Africa and some parts of the region including Aden,[77] the Ottoman Empire began to conquer Yemeni and other cities in the Arabian Peninsula from August 1538.[78] The Ottoman troops led by Sulaiman Pasha landed at Aden. Sulaiman Pasha killed the last sultan of Aden, `Amer bin Daood, who was in competition with Imam Sharaf Al-Deen, then ruler of San`a under the Imamate regime.

The Ottomans expanded their presence, brutally attacking the northern Yemeni capital San`a in 1547. In 1568 the Imamates won a fierce battle against the Ottomans and freed San`a. However, in 1570 the Ottoman army was successful in occupying San`a once again. From that point in time, the Ottoman expanded their presence in Yemen until 1613 when Yemeni troops managed to defeat the Ottoman troops.[79] As Schofield writes, the Imams gradually managed to increase their territory until it reached its peak between 1630 and 1728.[80] However, even during the days of Greater Yemen, the Ottoman Empire continued to claim a nominal title over the territory.[81]

In 1803, the First Saudi State invaded Yemeni territory in `Asir, Najran and northern Yemen and the Imamates could not repel the attack so they asked the Ottomans to intervene and free Yemen from Saudi control.[82] Thereafter, Commander Ibrahim Pasha managed to occupy the territories of the Saudi First State in Hejaz and Najd, while the Ottoman leader Hamood Ali freed `Asir and Yemen from Saudi influence in 1818.[83] In 1840 Ibtahim Pasha turned leadership in `Asir over to Shareef Al-Hussein bin Ali bin Haider, who in turn ruled `Asir in the name of the Ottomans.[84]

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[77] Bidwell, *The Two Yemens,* pp. 16-19.

[78] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* p. 256. See also Bidwell, *The Two Yemens,* who writes 'In 1538 Suleiman [the Ottoman Emperor] felt ready to challenge Portuguese naval supremacy in the eastern sea, and a fleet was equipped at Suez under a slave named Suleiman al-Khadim. When his fleet put into Aden, he invited the Tahirid Sultan [then local ruler of Aden] on board and hanged him from the yardarm. In a ruthless and treacherous campaign, with many massacres of prisoners, he conquered the Tihama [lowland located between the Red Sea coast and mountains in `Asir and northern Yemen]. He left it to his successor to take Sanaa and to install a Pasha [title given to Ottoman local ruler] to govern the province ...with the exception of the Zaydis in their mountains.' pp. 18-19.

[79] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* pp. 258-60.

[80] See section on the Imamate, above.

[81] Abaza, *Britain's Policy in Asir During World War I (in Arabic),* p. 11. Abaza said that the Ottomans left Yemen (including `Asir) on the 22nd October 1635.

[82] Abdul-Raheem, *The First Saudi State (1745-1818),* p. 194. See also Bidwell, *The Two Yemens*, pp. 29-30.

[83] Abdul-Raheem, *The First Saudi State (1745-1818),* p. 194.

[84] Abaza, *Britain's Policy in Asir During World War I (in Arabic),* p. 12.

In 1872 the Ottomans created the Vilayet of Yemen including `Asir and Jizan.[85] However, Al-Zulfa argues that the Ottomans gave `Asir political and administrative independence from Yemen from 1872 when it was granted the status of Liwa` or province.[86] There were six representatives of `Asir in the Ottoman Parliament.[87]

From the beginning of the twentieth century, Ottoman influence began to decline. In 1907 Sayyed Mohammed bin Ali Al-Idrisi, accompanied by Imam Yahya, started attacking the Ottomans in `Asir and northern Yemen[88] and they lost control over some parts of `Asir and Jizan when the Idrisi established its territory in 1908.[89] However, the Ottomans remained in Abha, capital of `Asir until they withdrew in 1918 and turned it over to local rulers, the Al-`Aid family.[90]

After the First World War, the Ottomans withdrew from the region completely including Yemen. As Leatherdale explains, upon the collapse of the Ottoman Empire in 1918, the Yemen became a successor state. [91] The 1923 Treaty of Lausanne, which formally established peace between Turkey and the Allied States, marked the official withdrawal of the Ottoman Empire from the Arabian Peninsula and all other territories outside Turkey and shows the Turkish waiver of all title to these territories. Article 16 provides:[92]

> 'Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.
>
> The provisions of the present Article do not prejudice any special arrangements arising from neighbourly relations which have been or may be concluded between Turkey and any limitrophe countries.'

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[85] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis,* p. 136.
[86] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p. 20. See map at Appendix 2.6.
[87] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p. 20.
[88] Abaza, *Britain's Policy in Asir During World War I (in Arabic),* p. 22.
[89] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p. 40.
[90] Al-Wahij, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in Light of British Role Based on Published Documents (in Arabic),* p. 41.
[91] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis,* p. 139.
[92] 1923 Treaty of Peace with Turkey Signed at Lausanne, in *The Treaties of Peace 1919-1923* (1924).

According to a map annexed to the Treaty of Lausanne, the previous Ottoman territory in Arabia was divided between Ibn Saud in Najd, the Hashimate family in Hejaz, the Idrisi in `Asir, and Imam Yahya in northern Yemen.[93]

In summary, the Ottomans ruled `Asir, Jizan and northern Yemen but not Najran[94] up until the emergence of Kingdom of Saudi Arabia, as well as the Yemeni republics and the Idrisi State until 1918.

(c) The Saudi presence (1803-present)

(i) The expansion of the first Saudi state

The original Saudi presence in the disputed territories goes back to the year 1803 when the first Saudi army invaded the Yemeni lands of `Asir and Jizan followed by the invasion of the northern Yemeni city of San`a.[95]

The Saudi presence in `Asir and Yemen was a result of official religious and military efforts to spread the call of Sheikh Mohammed bin Abdul-Wahhab, the spiritual leader of the first Saudi state whose alliance with Imam Mohammed bin Saud, then ruler of Dar`iya, created the first Saudi state in 1744/5. Safran explains:[96]

> 'The origin of the first Saudi realm was an encounter in 1744 between two men and two ambitions in a desert townlet called *Dar`iyyah*. One of the men was Muhammad ibn Abd Al-Wahhab, a religious preacher possessed of a sense of mission such as arose from time to time in the lands of Islam and left their mark on the course of history. Ibn Abd Al-Wahhab found few disciples in his own town. He encountered some success elsewhere before being driven out, and in 1744 he landed in Dar`iyya in search of a new base of support. The other man in that encounter was Muhammad ibn Saud, the shaikh of a small clan of one of the large tribes that had settled for several generations in two agricultural villages that had grown into the town of Darriyyah.'

When the first Saudi state was established, the Imams were ruling Yemen while the Sadat were ruling Najran following their rebellion against the Imams in 1730. Safran explains that due to a successful pact between Sheikh Mohammed bin Abdul-Wahhab and Imam

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[93] See map, Appendix 2.8.

[94] Al-Zulfa stated that the Ottomans had a plan to annex Najran to `Asir but that did not happen; Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p.21.

[95] See Abdul-Raheem, *The First Saudi State (1745-1818),* p. 167 and 183. See map, Appendix 2.7.

[96] Safran, *Saudi Arabia: The Ceaseless Quest for Security* (1985) p. 9. Additionally Vassiliev explains 'Ibn Abd al-Wahhab's need for military support and the ambitious emir's interest in religious backing led them to unite their efforts, and an alliance was concluded.' Vassiliev, *The History of Saudi-Arabia* (1998) p. 82 and pp. 83-111. See also Bidwell, *The Two Yemens,* pp. 29-30.

Mohammed bin Saud, not only was a Saudi state established but its territory soon expanded dramatically to include all Arabia:[97]

> 'At the time of Ibn Abd Al-Wahhab's visit, the Saudis and their domain were one of the less important of several Najd sheikhdoms, none of which matched the realm and power of sharifs (a title borne by descendants of the Prophet Muhammad) of the Hijaz, the Banu Khalid of Hasa and coastal district, the Sa`udn of Iraq, the Sadat of Najran, the imams of Yemen, or the sultans of Oman. Yet after meeting ibn Abd al-Wahhab, Muhammad ibn Saud concluded a compact with him in which he undertook to defy and fight one and all powers for the sake of God and empire. Ibn Saud had sought explicit assurance that Ibn Abd al-Wahhab would not ask him to forgo taxes on his subjects, and the latter had agreed and promised that if ibn Saud exerted himself and held fast to the doctrine of God's oneness, "the Almighty will hopefully conquer your conquests and recompense you with spoils of war far more ample than present revenues".'

It was 1764 when the first Saudi-Yemen military conflict occurred between Saudi troops and troops from Al-Ajman which is a part of the Yam tribe, the population of Najran.[98] Safran explains the outcome of the conflict:[99]

> 'A crucial moment occurred in 1764, when, after many skirmishes and battles, the Hasa and Najran leaders mounted large combined expeditions from the east and the south to put an end to the movement [Saudi movements]. Muhammad ibn Saud's son set out to meet the forces advancing from Najran but his forces were crushed not far from Dar`iyya. Fortunately for ibn Saud, the leader of Najran forces agreed to come to terms with him and returned home. When the Banu Khalid arrived on the scene, they withdrew after learning that their Najrani allies had made peace.'

In 1765 the Saudi founder, Muhammad bin Saud, passed away and was succeeded by his son Abd Al-Aziz [or Abdul Aziz] who ruled from 1765 to 1803. Abd al-Aziz's era witnessed dramatic Saudi territorial expansions into eastern, western and southern Arabia:[100]

> 'Under Abd Al-Aziz, the Wahhabi jihad gained momentum and the Wahhabi forces, ably led by Abd Al-Aziz's eldest son, Saud, were victorious in all directions ... To the east, the Wahhabis captured Qatif, an oasis inhabited by sectarian Shei`ites, and destroyed their places of worship. They also conquered Hasa, subjected Bahrain to their suzerainty, ... and reached the Arabian Sea. The sultan of Muscat (part of the present Oman) was intermittently forced to pay tribute but was able to escape subjugation by seeking and receiving timely support from British, Persian, and other Arab allies.'

Most importantly, for the first time the Saudi presence reached the Rub' Al-Khali Desert, `Asir and northern and southern Yemen.[101] Philby names Abu Nuqta as one of those `Asiri tribal leaders who welcomed Saudi advances into the region:[102]

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[97] Safran, *Saudi Arabia: The Ceaseless Quest for Security,* p. 10.
[98] Ibn Huthlain and Korshon, *History of Al-Ajman's Tribe: A Documentary Study (in Arabic)* (1998) pp. 29-30.
[99] Safran, *Saudi Arabia: The Ceaseless Quest for Security,* p. 10. See also Vassiliev, *The History of Saudi Arabia,* pp. 83-111.
[100] Safran, *Saudi Arabia: The Ceaseless Quest for Security,* pp. 10-11.
[101] Ibid., p. 10. Vassiliev, *The History of Saudi Arabia,* p.109.
[102] Philby, *Arabia* (1930) p. 87.

> 'Abu Nuqta, a chief of the `Asir province, had made a common cause with the Wahhabis, and organised an army for occupation of the Tihama with such success that within a few months he held all the coast from Qunfidha to the Mukha, then the chief port of the Yemen.'

Abdul Raheem notes that in 1801 the Imams of Yemen lost power to the Saudis in many places, except San`a, which the Saudi army besieged in 1808 but failed to capture.[103] He adds that some Sunni Yemeni welcomed the Saudi advances.[104]

After joining the Saudis, Sharief Hamud Abu Mismar (or Moosmar)[105] led the Saudi army in the Tihama area - a lowland area of what was to become northern Yemen - and the Saudis invaded and occupied Luhiyah, then the main seaport of Yemen. High taxes were imposed on traders and these taxes were sent to Dar`yiya. The cities of Beit Al-Faqeeh and Zibaid were also annexed by Abu Mismar in favour of the Saudis in 1803,[106] followed by Al-Zaidiyah Castle in 1804.[107]

Following a dispute with another local Saudi ruler over revenues, Abu Mismar refused to accept the decision of the Saudi leader and he was attacked in 1809-1810 by a Saudi army supported by troops from Najran and Yemen.[108] That signified the end of the Saudi presence in the parts of Jizan annexed and ruled by Abu Mismar. As a consequence, the Saudis were no longer in occupation of the area from Abu Arish to Zubaid, including a part of Jizan, and the coastal area of northern Yemen. However, the Saudis maintained their presence from Sabia (also a part of Jizan) to Hijaz.

In 1811 the Saudi territory was vast, as Philby reports:[109]

> 'The Wahhabbi empire thus extended in 1811 from Aleppo in the north to the Indian Ocean, and from the Persian Gulf and the `Iraq frontier in the east to the Red Sea. Such an

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[103] Abdul-Raheem, *The First Saudi State (1745-1818),* p. 168.
[104] Ibid., p. 169.
[105] 'Humud Abu Mismar, the sherif of Abu Arish, whose authority speared to a part of Tihama, joined the Wahhabis and probably even participated in the hostility against the imam of Sanaa. However, he was concerned at the rise of his neighbour and rival Abd al-Wahhab Abu Noqta, the ruler of Asir under the aegis of the Wahhabis.'; Vassiliev, *The History of Saudi Arabia,* p. 109.
[106] Abdul-Raheem, *The First Saudi State (1745-1818),* p. 183.
[107] Ibid., p. 185.
[108] 'Receiving proof of the unfaithfulness of his obstinate vassal, Saud ibn Abd al- Aziz began gathering detachments throughout Arabia to put an end to his activities. The Wahhabi army was said to be nearly 50,000 strong, though the figure may be exaggerated. Abu Mismar enjoyed the support of the nomads from Najran and Yemen. A fierce battle occurred at the end of 1809 and Abu Nuqta was killed. But Abu Mismar's troops were defeated. He fled and fortified his position in his capital, Abu Arish, which the Wahhabis failed to capture. Saud appointed relative Tami ibn Shuaib in place of Abu Nuqta.' Vassiliev, *The History of Saudi-Arabia,* pp. 109-110.
[109] Philby, *Arabian Jubilee,* p. 92.

> empire, comprising elements of an essentially centrifugal character and blessed with no means of communication faster than the camel, was enough to tax the resources of the strongest state and of the ablest administrator, even in the normal circumstances of peace.'

(ii) The decline of the first Saudi state

At this time Muhammad `Ali Pasha, Viceroy of Egypt under the Ottoman Empire, decided to take action to end the Saudi presence in Arabia and he was mandated by the Ottoman sovereign to attack the Saudis. In 1811 he landed in Yanbu, a seaport on the Red Sea, and his army advanced inland.[110] In 1813 he managed to occupy the Hijaz and `Asir.[111] Meanwhile, the Saudi ruler died in Dar`iyya in May 1814 and his son Abdullah became the new Saudi ruler.[112]

The Egyptian army kept advancing into Saudi territory and in 1816 the tribes of `Atiaba, Harb and Mutair transferred their allegiance from the Saudis to Mohammed Ali Pasha and they joined his army.[113] The Ottoman army under Ibrahim Pasha, son of Muhammad Ali Pasha, arrived at Dar`iyya on the 6th April 1818.[114] Ibrahim besieged the town with assistance from the tribes of `Atibah, Harb Mutair and Bani Khalid.[115] On the 9th September 1818, Abdullah bin Saud, the last ruler of the First Saudi State surrendered to Ibrahim Pasha and was sent to Turkey via Cairo. The first Saudi state ceased to exist.

Meanwhile the Imams of Yemen called on Muhammad Ali Pasha to free Yemen from Saudi occupation and Commander Hamud Ali led the Ottoman army which freed Yemen from Saudi occupation in 1819.[116] Thus, the Saudi presence ended in all of the disputed territories.

(iii) The second Saudi state

As a result of the Egyptian withdrawal from Najd in 1824, the second Saudi state was established in Riyadh, south of Dar`iyya, by Turki bin ibn Abdullah ibn Muhammad ibn Saud.[117] The leader of the second Saudi state decided not to confront the Egyptians in `Asir,

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[110] Ibid., p. 93
[111] Ibid., p. 95.
[112] Ibid., p. 96.
[113] Ibid., p. 98
[114] Ibid., p. 99.
[115] Abdul-Raheem, *The First Saudi State (1745-1818),* p. 349.
[116] See section of the Imamate, above.
[117] Safran, *Saudi Arabia: The Ceaseless Quest for Security,* p. 14.

Yemen and Hijaz, or the British in the Persian Gulf.[118] Instead Saudi territory was extended to the east towards al-Hasa and Bahrain:[119]

> 'The new Saudi state encompassed less territory than the emirate of al-Diriya [the First Saudi State] did. After establishing control over the central regions of Najd, Faisal's next task was to regain the Eastern Province (al-Hasa). In the autumn of 1843 he besieged Dammam, which was controlled by the Bahrainis. A conflict had occurred within the ruling dynasty in Bahrain: the former ruler had fled to the mainland and settled in Dammam. Simultaneously, Faisal attacked the Manasir, Al Murra and Bani Hajir tribes, who supplied the fortress with all their needs. The Bahrainis garrison surrounded in March 1844 and the Najdi [Saudi or Wahhabi] seized considerable spoils.'

Following the assassination of Turki (by his relative Mishari) in 1834, he was succeeded by his son Faisal who ruled until 1838 and then from 1843 to 1865.[120] Safran explains that the territory of the second Saudi state was much smaller than previously:[121]

> 'Faisal's second reign (1843-1865) was the golden age of the second Saudi realm. Territorially, the realm was much smaller than the first and had little of its dynamism; but it had far greater acceptance externally and internally, representing as it did a transition from "revolutionary Wahhabism" to "Wahhabism in one country". Faisal's ideal notion of the "one country" compromised all domains once conquered by his ancestors, but in practice he was careful not to press beyond the limits of his power. He not only refrained from challenging Ottoman rule in the Hijaz but also acknowledged the sultan's suzerainty and paid an annual tribute in exchange for Ottoman recognition of himself as "ruler of all the Arabs". In the opposite direction, Faisal endeavoured to assert his authority in Bahrain, Qatar, the Gulf sheikhdoms (known then as the Trucial Shaikhdoms and now as the United Arab Emirates), and the northern Oman but was careful not to clash with the British.'

The second Saudi state did not extend at any time to `Asir or Jizan. Nor was there any Saudi presence in Najran although good relations did exist between the Saudis and the Yam tribe which occupied that area. Al-Zulfa suggests that there was correspondence between Faisal bin Turki and the chief of the Yam tribe, Mannai bin Jabber, including a letter sent from Faisal bin Turki on 15 Shaban 1279 AH [corresponding to the 3rd February 1863] agreeing to form an alliance with the Yam.[122]

(iv) The third Saudi state and occupation of the disputed territories

The Kingdom of Saudi Arabia (or the Third Saudi State) resumed its presence in `Asir in 1919[123] shortly after the Ottomans withdrew from the region. The Saudi army swept into the lands surrounding Bisha city, east of Bilad Shahran, where it was joined by nomadic tribes of Qahtan and Shahran. The leader of the Saudi army, Prince Abdul Aziz bin Musaeed bin

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[118] Ibid., p.14.
[119] Vassiliev, *The History of Saudi Arabia,* p. 177.
[120] For a history of Faisal's rule see Hawley, *The Trucial States* (1970) pp. 149-160.
[121] Safran, *Saudi Arabia: The Ceaseless Quest for Security,* p. 16.
[122] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* pp. 174-5.
[123] Ibid., p. 29

Jalawi, delivered letters from Abdul Aziz Al-Saud (later King Abdul Aziz) to Ghamid, Zahran and other `Asiri tribes asking them to join him and to apply Islamic law.[124] Moreover the ruler of `Asir, Hassan bin Ali bin Muhammad bin `Aid, received two letters from Prince Abdul Aziz ibn Musaeed, asking him to enter into good relations with the Saudis. Hassan Al-Aid welcomed this whilst asking the Saudis to respect his boundaries and lands. Furthermore, he suggested that they co-operate in freeing his brother Nasser Al-Aid, taken hostage by the Idrisi ruler in Sabia, the Idrisi capital.[125] However, Prince Abdul Aziz ibn Mussaed disagreed; he wanted to control Al-Aid's territory in `Asir.

At the end of June 1920 the battle of Hajlah took place between Al-Aid's army and the Saudi army resulting in the Saudi annexation of this part of `Asir. Al-Zulfa suggests that most of Al-Aid's tribes welcomed Saudi governance and entered into Abdul Aziz ibn Mussaed's leadership.[126] King Abdul Aziz appointed Shuwaish bin Dhwaihi Al-Mutairi, as governor of Abha, in the centre of `Asir, and its capital during Ottoman and Al-Aid eras.[127]

At about the same time, Prince Abdul Aziz ibn Mussed sent a letter to the Al-Idrisi ruler at his capital of Sabia.[128] The correspondence resulted in the conclusion of the Saudi-Idrisi Treaty of 1920 delimiting Saudi territory in `Asir and describing which tribes were of Saudi or of Idrisi dependence.[129] Until 1926 `Asir was thus divided between the Saudis and the Idrisis.[130]

(d) The British Empire (1839-1967)

(i) Establishment of the Aden Colony and the Protectorates

On the 19th January 1839, British troops landed in Aden under the leadership of Commander Stafford B. Haines following a conflict between British workers of the East Indian Company and the Yemeni people[131] and the Aden Colony was thus established.[132] As Gavin has explained:[133]

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[124] Ibid., p.29.
[125] Ibid., pp. 33-4.
[126] Ibid., pp. 34-5.
[127] Ibid., p. 43.
[128] Ibid., p. 42
[129] Ibid., pp. 40-2.
[130] See section on the Idrisi, below.
[131] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic)*, p. 31.
[132] Ibid., p. 36.
[133] Gavin, *Aden under British Rule 1839-1967*, (1975) p. 1.

> 'On the morning of 19 January 1839, a small squadron of British ships, a Royal Navy frigate, an East India Company cruiser, an armed schooner and transports carrying seven hundred British and Indian troops, stood off the town of Aden in South-West Arabia. They were there with instructions to occupy the town and port and they had learned that they could expect resistance. Ashore, about a thousand Arab fighting men crouched behind the mouldering defences along the bay and on the better fortified Sirah Island which commanded the harbour. The defenders were mostly armed with matchlock guns and although some among them knew how to work the thirty-three heavy and light cannon at their disposal, they put their main trust in their familiar hand weapons. At 9.30 am the British flagship swung forward from its anchorage and, holding close to the shore, moved in below Sirah and opened fire at three hundred yards range on the fortified battery on the seafront of the rocky island. For half an hour ship and fort engaged each other with the ship gradually gaining the upper hand. Its weapons were newer and more efficiently handled; the reply from the island was irregular and the shot from the upper defensive works flew harmlessly over the masts. The British flag was hoisted and Aden became the first colonial acquisition of Queen Victoria's reign. The spot upon which the victorious East India Company troops stood had been the site of a city for many centuries.'

Thereafter, the British presence spread into southern Yemen which was divided into several local provinces under sultans in the east and the west. There were eight eastern provinces[134] and twenty-three western provinces.[135] [136]

In 1888 Britain signed the first protection treaty with the Quaiti Sultan `Aawad bin Omar Al-Quaiti in eastern southern Yemen.[137] This precedent was followed by the other southern Yemeni sultans who signed similar agreements of protection with Britain.[138] That process eventually produced two protectorates; each including a number of sultanates or provinces.

The eastern protected province was in Hadramut and called 'Eastern Aden Protectorate' and the western was called 'Western Aden Protectorate'. The Aden Colony and the two protectorates formed the southern Yemen territory under British influence.

(ii) The boundaries of British influence

The British presence in southern Yemen extended to the Rub' Al-Khali Desert. It is unfortunate that there is inadequate information on the British presence in the desert itself. Most archival resources deal with the British rule in Aden and the southern Yemen

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[134] Sultanate Al-Quaiti, Al-Quthair, Al-Wahidi, Beir Ali, Howra Al-Suflah, `Aragah, Al-Mahd, Gushn and Suqutra

[135] Lahj, Al-Subaiha, Al-`Agareb, Al-Hawashib, Al-Fadli, Sultanate Al-Awalig Al-Olya, Mashiysha Al-Awalig Al-Olya, Sultanate Al-Awalig Al-Sufla, Mashihkha Al-Awalig Al-Sufla, Sultanate Yafe Al-Olya, Sultanate Yafe Al-Sofla, Mashiykhat Al-Quaiti and others.

[136] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* pp. 33-5.

[137] Ibid., p. 38.

[138] For further information on the conclusions of Anglo-southern Yemen protection treaties read Ibid., pp. 35-56.

protectorates rather than British activities in the remote desert. The most reliable information on this area consists of the 1913-14 Anglo-Turkish Conventions, as well as an official British report on 'Incidents and Saudi Protests',[139] and an official British confidential memorandum prepared in 1966 entitled 'The Saudi-PRSY Frontier in the Wadiah Area'.[140]

To avoid conflict, the two main powers in Arabia (Britain and the Ottomans) signed two agreements, the 1913 and 1914 Anglo-Turkish Conventions,[141]depicting boundary lines between the Ottoman and the British territories. The 1913 Anglo-Turkish Convention, which was not ratified, created the Blue Line which cut through the area between Al-Hasa and Qatar and stopped at a point to the north of the Rub' Al-Khali Desert. This line was located far from the Saudi-Yemeni disputed territory, so it is not relevant to the dispute under consideration in this thesis. However, the 1914 Anglo-Turkish Convention created the Violet line which ran from the Blue Line to a point between northern and southern Yemen, cutting through the desert between Najd and southern Yemen, what at that time was the Eastern Aden Protectorate. The British Government maintained that the 1914 Convention defined the frontier in the Rub' Al-Khali Desert area.[142] However there were often disputes between Britain and Saudi Arabia over the presence of each other in the area to the south of the Violet line. For example, one such incident is described by a British Foreign Office report as follows:[143]

> 'In November 1954 the Saudis protested against the establishment of an I.P.C geological party at Thamud (51.30E 18.03N). We replied that this was in Protectorate territory. In a Note of 4 April 1955 the Saudis declined to accept this…'

Britain also contested the Saudi's presence in the desert north of Violet line:[144]

> 'On 27 January, 1954, an Aden official with a party of local guards met an ARAMCO party accompanied by Saudi guards at a point in the Rub al Khali [the Empty Quarter] plotted by the ARAMCO party as 17.22N 47.16E. After being told they were on Protectorate territory they withdrew. On 10 February the Saudi Government protested against the arrival of British forces on what was claimed as undisputed Saudi territory. (The point was in fact to the N. of the Violet line.) We told the Saudis that, since the area had been the subject of past negotiations, it could be considered in dispute.'

The British reply to the Saudis was presented on the 12th September 1954:[145]

> 'HMG have studied the circumstances in which the incident occurred and have noted that the ARAMCO party the British Political Officer met in an area which has been the subject

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[139] Public Record Office (PRO) docuemnet no. FCO 371/185273, *Incidents and Saudi Protests*.
[140] PRO, FCO 8/ 1459. report issued by the British Embassy, Jedda, dated the 6th January 1970.
[141] See Appendices 1.1 and 1.2.
[142] PRO, FCO 8/ 1459.
[143] PRO document no. FO 371/185273.
[144] *Ibid.*
[145] *The Saudi-PRSY Frontier in the Wadiah Area.*

> of negotiations between HMG and the Saudi Arabian Government. The area in question must therefore be considered to be in dispute between the two Governments.'

These incidents illustrate that during the 1950s the British were present on different occasions in the disputed territory within and beyond the Violet line. In fact the British also claimed title to areas beyond the Violet line based on tribal allegiance to the Eastern Aden Protectorate. For example, they claimed title to an area occupied by a tribe paying allegiance to the Quaiti Sultan even though it was beyond the Violet line:[146]

> 'It should be noted, however, that neither the Foreign Office nor the Colonial Office at this time saw any objection in principle to claiming territory beyond the Violet Line, if there was sufficient evidence of habitation by tribes owing allegiance to the Eastern Aden Protectorate Rules. Following receipt of the Saudi Note referred to...the matter was investigated. Although the point concerned lay well north of the Violet Line and therefore outside limits previously claimed for the Aden Protectorate, the Governor of Aden, supported by the Resident Advisor Mukalla, claimed the area for the Quaiti Sultan. The area claimed was bound roughly by a line from Jabal Thaniyah through Raiyan to the Qaamiyah sand ridge north of Sharurah and on the intersection of the Riyadh Line and the Violet Line. The basis of the claim was that this area lay within the tribal dirah [homeland] of the Seiar, a nomadic tribe under the authority of Quaiti Sultan. According to the Aden authorities, the recognised boundary between the Quaiti Seiar and Kurab, on the one hand, and the Yemeni Dahm and Abid and the Saudi Yam, on the other, was Raiyan, and the Qaamiyah sand ridge was the generally accepted boundary between the Quaiti tribes and the Saudi Yam, Qahtan and Al-Murra. The Resident Advisor Mukalla stated categorically that Qarn Wadiya (probably Wadiah) lay within Seiar territory.
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> It should be noted although the Saudi Government have preferred claims to territory south of the Violet Line, HMG have never formally claimed sovereignty on behalf of the EAP [Eastern Aden Protectorate] Rulers over territory north of the Violet Line, and that the Sharurah-Wadiah area had not been the subject matter. It should also be noted the Seiar, though claimed as a Quaiti tribe, tended to owe allegiance to either the Quaiti Sultan or the Saudis as suited their book, and that tribal dirahs in this area are not mutually exclusive.'

The British stayed in southern Yemen until independence on the 30th November 1967,[147] a period of almost 128 years. After the British withdrew, the People's Democratic Republic of Yemen or PDRY was established.

(e) The Idrisi (1910-1926)

(i) The emergence of the Idrisi

The Idrisi family are descendants of Ahmed bin Idriss Al-Magrabi, born in Tunisia, who moved to Sabya in Jizan in 1829/1830. He died in 1837/1838 after becoming a very popular religious figure amongst the tribes and people of Jizan.[148]

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[146] Ibid.

[147] Al-Asbahi, *The Yemeni Unity... a Promising Arab Example at the Beginning of 21st Century (in Arabic)*, p.4.

[148] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic)*, pp. 266-7.

A conflict arose between the tribe of Ja`afrah and the tribe of Sabya in 1902 and Muhammad bin Ali, great-grandson of Ahmed bin Idriss Al-Magrabi, successfully mediated between the disputing parties. As a result, he was appointed as chief of the people of the province.[149]

As Leatherdale[150] and Abaza[151] have explained, in 1907 Imam Yahya and the Idrisi started hostilities against the Ottomans in south-west Arabia.[152] Whilst Imam Yahya ceased his belligerent acts against the Ottoman following the 1911 Da`an Agreement, the Idrisi continued to struggle against the Ottomans, thus attracting the attention of the Italians and the British.[153] In 1911 the Italians agreed to provide the Idrisi with weapons to attack the Ottomans. After the conclusion of the Da`an Agreement, Imam Yahya turned against the Idrisi and his followers attacked Idrisi locations during 1913/1914, destroying the stores of weapons which had been provided by Italy.[154]

On the 30th April 1915 the Anglo-Idrisi Treaty was signed, recognising the independence of the Idrisi ruler, whilst Britain undertook to protect the Idrisi from foreign attacks.[155] However, the British accepted that the Idrisi ruler had gained his independence before 1915, as reported in one Foreign Office document in 1933:[156]

> 'The Idrisi had for many years before the war been *de facto* the independent ruler of a tract of the Arabian Peninsula on the borders of `Asir and Yemen. From this tract he had effectively excluded the Turks, with whom he was in a chronic state of war, and during the Turko-Italian war of 1911-1912 the Italians entered into relations with him, and supplied him with arms.'

From Sabia, the Idrisi presence extended to the seaport of Jizan and then to Midi after the Italians managed to destroy Ottoman military ships in the Red Sea.[157] Following his alliance with the British in 1915, the Idrisi ruler managed to extend his influence over the Yam tribe living in Najran and recruited their men to fight in his armies under Idrisi commanders.[158] The Yam's fighters participated in Idrisi attacks, in association with British maritime attacks,

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[149] Ibid., p. 267.
[150] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis,* p. 136.
[151] Abaza, *Britain's Policy in Asir During World War I (in Arabic),* p. 22.
[152] Al-Zulfa, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State,* p. 30.
[153] Abaza, *Britain's Policy in Asir During World War I (in Arabic),* p. 23.
[154] Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* p. 268.
[155] See Appendix 1.4.
[156] Public Record Office (PRO) document No. FO 371/18273.
[157] Abaza, *Britain's Policy in Asir During World War I (in Arabic),* p. 33.
[158] Ibid., p. 46.

against the Al-Hudaidah seaport in northern Yemen, the city of Luhya, and other Ottoman locations.

When the First World War ended, the Ottomans withdrew from Arabia and the Idrisi State appeared as a new independent power. Its territory was Jizan, Najran and some parts of the northern Yemeni Tihama or coastal areas. In 1921 Britain gave the city of Al-Hudaida to the Idrisi as a gift.[159]

(ii) The decline of the Idrisi

However, the success of the Idrisi was short-lived. Between 1919 and 1926 Imam Yahya gradually occupied lands in northern Yemen which the Idrisi had occupied during the First World War with British assistance.[160] Moreover, Saudi Arabia was also expanding its prescence into `Asir through the annexation of Al-Aid territory in 1920.[161] In the same year, the Idrisi recognised Saudi sovereignty or influence over Yam according to the 1920 Saudi-Idrisi Treaty. Fearing a Yemeni invasion, the Idrisi signed the 1926 Treaty of Makkah with the Saudi King, which, according to Article 1, changed their status from that of an independent ruler of `Asir and Jizan into that of a local ruler under Saudi sovereignty.[162]

5. Population and Tribes

Generally speaking, the disputed territories are populated by tribes. As a British official explained in 1934:[163]

> 'The population of the country is nomadic, the tribes travel considerable distances according to the season in search of water and pasture, the average Arab Sheikh has a very vague idea as to where his territory begins and ends, and often there are no well defined physical features along which a boundary could be conveniently placed. In the eyes of the average Arab – and when one is considering the creation of frontiers one must consider local public opinion however unorthodox this may appear – a frontier is not so much geographical as tribal and political.'

Al-Ghamdi describes those tribes living in the Arabian Peninsula as descendants of the Adnan and Qahtan tribes.[164]

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[159] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis,* p. 137; also Sharaf Al-Deen, *Yemen through History from the 14th Century B.C. to the 20th Century (in Arabic),* p. 272.
[160] See section on the Imamate, above.
[161] See section on the Saudis, above.
[162] See Appendix 1.8.
[163] *Note by Colonel T. C. Fowle, C.B.E. (P.Z.6039/34).*
[164] Al-Ghamdi, *The Saudi-Yemeni Boundary: Towards a Peaceful Resolution*, p. 57 and pp. 280-286.

(a) Rub' Al-Khali Desert Tribes

Al-Ghamdi's map of the Saudi-Yemeni Rub' Al-Khali Desert frontier depicts the location of those tribes living there[165] which include the Yam of Najran, Al-Sayar,[166] Al-Maharah, Al-Manahil, Dahm, and others. In addition, the Rub' Al-Khali Desert is occupied by Al-Murra. In the words of Sanger: [167]

> 'The Murra are the most primitive of all tribes in Arabia. Their food consists of dates, which are carefully rationed, camel's milk, and occasionally meat etc... They conduct raids suddenly out of their desert vastness, killing, plundering, and attacking caravans, and then withdraw quickly into their waterless wastes where no one would dare to follow. They have been known to raid as far south as the Hadhramaut, a distance of four hundred miles.'

(b) Tribes in `Asir, Jizan and Najran

The 1934 Treaty of Taif mentioned the names of the tribes living in `Asir, Jizan and Najran at the time. The boundary depicted in the treaty is described largely in terms of tribes and Article 4 mentions the Beni Jama'a, the Waila tribe, the Yam tribe, the Hamdan-bin-Zaid, the Harth tribe, the Muim, the Wa'lan, the Khuba, the Jabri, the Abadil, the Faifa, the Beni Malik, the Beni Haris, the Al Talid, the Qahtan, the Dhahran, and the Wadi'a.[168] In addition, `Asir is the land of the Ghamid and Zahran tribes, Bani Shir, Sharhar, and other tribes, all of whom are descendants of Qahtan. Qahtan is the father of all tribes in Yemen. The Yam, Al-Murra and Sayer tribes are cousins.[169]

6. Motives behind the disputes

The motives behind the Saudi-Yemeni disputes can be divided into a number of different categories: religious, political and economic. The political motives behind the dispute have been explored above but this section will explain other motives.

An example of the religious motives involved in the dispute is the difference between the Islamic schools. The Yam tribe and the Imam of Yemen are Shiite while Saudi Arabia, `Asir and half of the northern Yemeni population are Sunni.

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[165] See map at Appendix 2.10.
[166] Or Seiar as mentioned in British report above.
[167] Sanger, *The Arabian Peninsula* (1958) pp. 127-128.
[168] For full text, see Appendix 1.12.
[169] See also Al-Ghamdi's diagram showing genealogical tree of the Yam Tribe, in Al-Ghamdi, *The Saudi-Yemeni Boundary: Towards a Peaceful Resolution*, pp.281-286.

There is one important economic motive behind the dispute: oil.[170] Oil emerged as a factor after Saudi Arabia granted oil rights to an American company in 1933:[171]

> 'Immediately following the award of a Saudi concession to the Standard Oil Company of California (SOCAL) in 1933, problems arose over the precise geographical limits of that concession and possible future ones. The problem escalated until it became apparent that the entire issue of the frontiers between Saudi Arabia and the British- protected coastal territories of eastern and southern Arabia was at stake.'

In a paper written shortly before the final settlement between Saudi Arabia and Yemen, Detalle explored the oil and gas factor in the dispute. He concluded that:[172]

> '[Saudi Arabia's] procrastination denies the [Republic of Yemen] the economic self-sufficiency possible if new discoveries were made in the contested areas. The existence and size of these potential oil fields is disputed, with some foreign experts' opinions being much less optimistic than those of the Yemeni government.
>
> The possibility of creating a neutral zone and sharing water or oil is not discussed officially as both sides insist on total sovereignty.'

The Yemeni government developed a map[173] of the locations of oil reserves located in the territory it claimed in the Rub' Al-Khali Desert and granted oil exploration licenses to foreign companies to exploit these reserves. However, in June 1992 Saudi Arabia sent letters to those non-American companies informing them that the areas where they were granted oil exploration concessions by Yemen in fact belonged to Saudi Arabia.[174] Oil continued to be an important factor in the dispute until it was settled in 2000.

7. Conclusion

This chapter has explored a number of historical and geographical issues underlying the territorial sovereignty disputes between Saudi Arabia and Yemen. What at first sight appears to be a dispute between two states is, on closer inspection, a complex interaction of competing tribes, states and imperial powers. These issues provide the broader context to the legal aspects of the dispute considered in the following chapters.

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[170] Al-Nu`aim, *The Saudi Political Boundaries: Looking Towards Stability (in Arabic)* (1999) pp. 51-2.
[171] Leatherdale, *Britain and Saudi-Arabia 1925-1939: The Imperial Oasis,* p. 221.
[172] Detalle, 'Saudi Arabia and Yemen: Beyond the Boundaries', in Detalle (ed.) *Tension in Arabia: The Saudi-Yemeni Fault Line,* p. 152.
[173] See map at Appendix 2.11.
[174] 'Resolving the Saudi-Yemeni Border Dispute' in *Strategic Comments,* International Institute for Strategic Studies (1995) vol. 3, p. 1.

Chapter 2

Classification of the Saudi-Yemeni territorial sovereignty disputes

1. Introduction

This chapter discusses the nature of the dispute between Saudi Arabia and Yemen over `Asir, Jizan, Najran and the Rub' Al-Khali Desert. In particular the chapter will address the question of whether the disputes are boundary or title in nature or a combination of both. If they are territorial disputes, are they legal or political in nature? If they are boundary disputes, are they delimitation disputes or demarcation disputes?

For the proper examination of the nature of the dispute, it is pertinent to divide the analysis into two sections given that, as was explained in chapter 1, Yemen was partitioned into two states until 1990 and there were therefore two separate international boundaries involved. The territories of `Asir, Jizan, and Najran are located between Saudi Arabia and the former northern Yemen and this section of the boundary was the subject of the 1934 Treaty of Taif. In turn, the Rub' Al-Khali Desert, located between Saudi Arabia and southern Yemen, was covered by the 1914 Anglo-Turkish Convention. An examination of these two treaties and relevant exchange of notes as well as official documents and relevant scholarly material will reveal the nature of the disputes until they were settled by the 2000 Treaty of Jeddah.

Before examining the nature of these particular disputes, it will be of value to clarify the differing concepts of boundary disputes and title disputes in international law.

2. Classification of territorial sovereignty disputes

(a) Concept of "dispute" in international law

It is paramount at this juncture to discuss the concept of a dispute in international law. Certain judicial decisions discuss this matter. In the *Mavromatis Palestine Concessions Case* the Permanent Court of International Justice (PCIJ) defined a dispute as 'a disagreement on a

point of law or fact, a conflict of legal views or interests between two persons.'[1] This definition indicates an important characteristic of a dispute; a disagreement is not a dispute unless there is a conflict of legal views, interests, or facts.[2]

Moreover, the ICJ considers that a dispute also exists if the behaviour, rather than the actual arguments, of the disputing parties reveals a disagreement. In the *Case Concerning the Applicability of the Obligation to arbitrate under section 21 of the United Nations Headquarters Agreement of 26th June 1947* the ICJ rejected US arguments that there was no dispute, deducing evidence of a real conflict between the Organisation and the host state from their opposing attitudes.[3] The ICJ pointed out that:[4]

> '... where one party to a treaty protests against the behaviour or a decision of another party, and claims that such behaviour or decision constitutes a breach of the treaty, the mere fact that the party accused does not advance any arguments to justify its conduct under international law does not prevent the opposing attitudes of the parties from giving rise to a dispute concerning the interpretation or application of the treaty.'

With regards to the consideration of 'opposing attitudes' even in cases where one party does not recognise a dispute, Wallace-Bruce has commented that:[5]

> 'The United States did not contest the view of the United Nations that the closure of the PLO Observer Mission by the enforcement of the *Anti Terrorism Act 1987* would constitute a violation by the United States of its obligations under the 1947 Agreement. In fact, the United States assiduously avoided using the word 'dispute' in its public statements on the issue. Nevertheless, on an objective determination of the facts, the Court held that a dispute existed. This was because the attitudes of the two parties were opposed. The United Nations Secretary-General regarded the various measures taken by the United States against the PLO Observer Mission to the United Nations in New York to be contrary to the Headquarters Agreement.'

It is clear from the jurisprudence of the Court that a legal dispute can be said to exist notwithstanding significant political dimensions and the ICJ has been reluctant to dismiss cases because they have a political element. In the *Legality of the Threat or Use of Nuclear Weapons Case*, the Court found that the fact that a question also has political aspects does not suffice to deprive it of its character as a legal question and it was willing to consider the

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[1] *Mavromatis Palestine Concessions Case* (1924) *PCIJ Reports, ser. A, Vol.2*, p. 11. See also Brownlie, *Principles of Public International Law* (1998) p. 481; Shaw, *International Law* (1997) pp. 719-720 and 750-753.

[2] See also *South West Africa Cases* (1968) *ICJ Reports,* p. 3 and 10.

[3] *Case Concerning the Applicability of the Obligation to Arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Advisory Opinion)* (1988) *ICJ Reports,* p. 12.

[4] *ILR* (1990) Vol. 82, p. 225 and 246.

[5] Wallace-Bruce, The Settlements of International Disputes: The Contribution of Australia and New Zealand (1998) pp. 5-6.

legal aspects of the dispute.[6] This decision was recently confirmed by the International Court of Justice in the *Advisory Opinion issued on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.*[7] The Court noted that the building of a wall inside the occupied Palestinian territory in the West Bank by Israel resulted from a conflict of political interests. However, the Court held that this would by no means justify abstaining from discussing the issue because almost all legal disputes involve political dimensions. The Court's Advisory Opinion provided examples of other cases where the Court had held similar views about its capacity to deliberate issues despite challenges on its jurisdiction due to the political nature of the issues at hand. The ICJ emphasized its jurisdiction by saying:[8]

> '41. Furthermore, the Court cannot accept the view, which has also been advanced in the present proceedings, that it has no jurisdiction because of the "political" character of the question posed. As is clear from its long-standing jurisprudence on this point, the Court considers that the fact that a legal question also has political aspects, 'as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question' and to 'deprive the Court of a competence expressly conferred on it by its Statute' (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J, Reports 1973*, p. 172, para. 14). Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law (cf. *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, pp. 61-62; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, pp. 6-7; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 155)." (*Legality of the Threat or Use of Nuclear Weapons, I.C.J. Reports 1996 (I)*, p. 234, para. 13.)'

These decisions would support the view that even though the Saudi-Yemeni territorial sovereignty disputes had substantial political aspects, as well as economic motives, as seen in chapter 1, it can still be classified as a legal dispute in accordance with the understanding of this term in international law. The definition of dispute offered by the Court will also help in the determining whether the Saudi-Yemeni claims involved a title or a boundary dispute or a combination of both.

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[6] *Case Concerning the Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* (1996) *ICJ Reports,* para. 13.

[7] *Legal Consequences of Building a Wall in the Occupied Palestinian Territory (Advisory Opinion)* (2004); see http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm (last visited on 8th August 2005).

[8] Ibid., para. 41.

(b) Boundary disputes

What does the term "boundary" mean and what types of boundary exist? Cukwurah defines a boundary as a 'line',[9] whereas Oppenheim's International Law defines boundaries in international law as 'the imaginary lines on the surface of the earth which separate the territory of one State from that of another, or from an un-appropriated territory, or from the open sea.'[10]

The term "frontier" is frequently used to denote a "boundary" though the former more accurately means a "zone" that is located between two territories separated by a boundary. Cukwurah urges a distinction in the usage of these terms since the interchangeable employment of them can cause confusion, especially when legal technicalities dominate a boundary question.[11]

Generally speaking, international boundary disputes are either about delimitation or demarcation of the boundary lines. Although both types deal with the imaginary lines of the boundary between the disputing states, each type has its own characteristics. As Oppenheim's International Law explains:[12]

> 'The common practice for land boundaries is, in a boundary treaty or award, to describe the boundary line in words, i.e. to 'delimit' it; and then to appoint boundary commissions, usually joint, to apply the delimitation to the ground and if necessary to mark it with boundary posts or the like, i.e. 'demarcate' it.'

Cukwurah defines delimitation as all proceedings connected with the determination of a boundary line in a treaty, an arbitral award or a boundary commission's report as the case may be.[13] Demarcation is the stage following on from delimitation, as one author has noted:[14]

> 'The demarcation of a boundary line, therefore, amounts to laying it down, as mutually defined, by means of boundary pillars, monuments and buoys, and permanent erections of other kinds, along the topographical conformations of the territories to be separated by it.'

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[9] Cukwurah, *The Settlement of Boundary Disputes In International Law* (1967) p. 11. See also Brownlie, *Principles of Public International Law,* p. 122.
[10] Jennings and Watts, *Oppenheim's International Law,* (1992) p. 661.
[11] Cukwurah, *The Settlement of Boundary Disputes In International Law,* p.11.
[12] Jennings and Watts, *Oppenheim's International Law,* p. 662.
[13] Cukwurah, *The Settlement of Boundary Disputes In International Law,* pp. 27-8; McMahon, 'International Boundaries' (1935) *Journal of the Royal Society of Arts p. 84.* Taha, *International Law and Boundary Disputes (In Arabic)* (1982) pp. 63-65.
[14] Jennings and Watts, *Oppenheim's International Law, p. 28.*

In boundary disputes, states often disagree on the nature of the dispute. For example, in the *Dubai-Sharjah Case*[15], Dubai considered it a delimitation dispute, whereas Sharjah claimed that it was merely a demarcation dispute. The arbitral award indicated:[16]

> 'Sharjah saw this as essentially the task of demarcation of existing boundary established by Tripp "awards"[17]. Dubai argued for the broader task of delimitation, on the basis that Tripp "awards" were not binding, that no such award had been made for the maritime boundary (so delimitation was demonstrably required there), and that it could not have been the intention of the Parties to nominate three jurists if what was required was a simple demarcation exercise.'

In the *Case Concerning Maritime Delimitation and Territorial Questions (Qatar v. Bahrain)*[18] Bahrain and Qatar disputed over title to Hawar Islands. Bahrain asked the court to consider the British letter dated 11th July 1939 as an "award". According to the letter, the British Government suggested that the title to Hawar Islands would belong to Bahrain. Qatar challenged the British decision. The Court held that title to Hawar Islands in favour of Bahrain.[19]

In the *Sino-Indian Boundary Dispute*, China claimed that the boundary, as a whole, between the two states has not been formally delimited.[20] In a letter to the Indian Prime Minster on the 23rd January 1959, the Prime Minister of China requested that the two states delimit their

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[15] *Dubai-Sharjah Arbitration Case* (1981) *ILR 91,* p. 543.

[16] Ibid.

[17] The Tripp "awards" were a series of decisions made in 1956-57, establishing the boundary. Tripp, a British official, decided these boundary issues upon a request in 1954 from the Rulers of Dubai and Sharjah to the British Government.

[18] See *Maritime Delimitation and Territorial Questions* (2001) *ICJ Reports 57, 103 and 106.* See http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm (last visited on 8th August 2005).

[19] However, the Court rejected the claim by Bahrain that the 1939 decision issued by the British Government had any legal binding force since it was merely an 'award' of arbitration. The ICJ Judgment explained the circumstances of the British decision as follows: 'The Court observes that in the present case no agreement existed between the Parties to submit their case to an arbitral tribunal made up of judges chosen by them, who would rule either on the basis of the law or *ex æquo et bono*. The Parties had only agreed that the issue would be decided by "His Majesty's Government", but left it to the latter to determine how that decision would be arrived at, and by which officials. It follows that the decision whereby, in 1939, the British Government held that the Hawar Islands belonged to Bahrain, did not constitute an international arbitral award.' See *Maritime Delimitation and Territorial Questions* (2001) *ICJ Reports*, para. 114. However, rejecting Qatar's claim that the British 1939 decision had no legal value, the Court found that the decision did enjoy legal validity and was binding at the time of independence of both states in 1971. Thus, *Hawar* Islands were decided in favour of Bahrain.

[20] China's southern frontier with India extends over 2,500 miles although only 2,200 miles from north-west Kashmir, whose title is disputed with Pakistan. It extends to the tripartite boundary junction of China, Burma and India near the Talu Pass including the Sikkim-Tibet and Bhutan-Tibet boundaries. The disputed land area is about 50,000 square miles. See Rao, 'The Sino-Indian Boundary Question: A Study of Some Related Legal Issues' (1963) *Indian Journal of International Law,* p. 152.

boundary. In response India argued that the boundary delimitation had already been fixed and if a dispute existed at all, it was merely a demarcation issue:[21]

> 'The Indian Government, in any event, firmly holds that the entire length of the boundary has been delimited, either by treaty or by custom or by both and that this position had fully been accepted by successive Chinese Governments until very recently.'

These examples show that states often disagree over the classification of a dispute. In some cases, one state may argue that the boundary has been delimited – based on an instrument such as an international treaty or an administrative decision made by a former colonial power and that the issue is simply relevant to demarcation; by contrast the other state may contest that there is no delimitation at all.

(c) Title disputes

A title to a land territory forms the cornerstone of a territorial or title dispute. As has been pointed out elsewhere:[22]

> 'One state by drawing a boundary seeks to supersede or eliminate another [state] in relation to a particular area of land. Such disputes may not involve the drawing of lines between adjacent territorial entities.'

Territorial disputes can emerge between non-adjacent states, for example, the Falkland Islands dispute between the United Kingdom and Argentina, or between adjacent disputing states, for instance, the Kashmir dispute between India and Pakistan. In the latter case, both claim an absolute title to all of Kashmir.[23]

India also counters Chinese title claims to areas estimated at about 50,000 square miles, including title to Demchok, Nilang-Jadhang, certain small areas such as North-Hoti, Sangchamallah and Laphtal, as well as a major part of India, called 'NEFA'.[24]

The Buraimi Oasis Arbitration[25] was one of the most famous territorial disputes in Arabia which occurred between Saudi Arabia and the United Kingdom, acting on behalf of the states of Abu Dhabi and Oman. In this case, the two states disputed title to the Buraimi Oasis, although Britain withdrew from the arbitration before a decision could be made.

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[21] Ibid., p.153

[22] Sharma, *Territorial Acquisition, Disputes and International Law* (1997) pp. 23-4.

[23] Sharma, 'Boundary Dispute and Territorial Dispute: A Comparison' (1970) *Indian Journal of International Law,* p. 159. See also Geigre, 'Kashmir' (2000) *Encyclopaedia of Public International Law, 3:69,* pp. 195-200.

[24] Rao, 'The Sino-Indian Boundary Question: A Study of Some Related Legal Issues' p. 152.

[25] *The Buraimi Memorials 1955* (1987).

The Case Concerning The Territorial Dispute (Libyan Arab Jamahiriya/Chad)[26] and the *Western Sahara Case*[27] are among the better known territorial disputes which have occurred in the Arab World. The *Qatar-Bahrain Case* included disputed title to the Zubarah area.[28]

Starting as a boundary delimitation dispute, the *Iraqi-Kuwaiti dispute*[29] developed into a disputed title claim by Iraq to the whole territory of Kuwait, culminating in the Iraqi invasion of Kuwait on the 2nd August 1990.[30] This was an unusual case because Iraq had formerly recognised Kuwait's independence and the boundary between them was delimited in a 1963 agreement. According to this agreement, the boundary was demarcated under the auspices of the United Nations.[31]

Territorial disputes can be classified as legal territorial disputes and political territorial disputes. Legal territorial disputes occur where a state party in a dispute claims title according to the international law modes of title acquisition, such as cession, prescription, annexation[32], discovery and occupation of a *res nullius* territory, succession, and self-determination.[33] Sharma explains that 'the claimant state has title in fact to the territory, and it invokes rules of international law and presents factual evidence in support of the claim.'[34]

Territorial disputes of a political nature exist when a party to a dispute tries to convince others (the other party in the dispute, as well as third parties) that the title it claims is logically hers although these claims are not derived from rules of international law: [35]

> 'In a political dispute, a variety of arguments are made seeking to make out a case that the territory shall belong to the claimant state.'

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[26] *Territorial Dispute Case* (1994) *ICJ Reports,* p. 4.
[27] *Western Sahara Case (Advisory Opinion)* (1975) *ICJ Reports,* p. 4. The Court issued its Advisory Opinion as requested by Resolution no. 3292 (XXIX) adopted on 13 December 1974 by the UN General Assembly; see ibid., p. 5.
[28] *Maritime Delimitation and Territorial Questions* (2001) ICJ Reports.
[29] Upon the grounds of "historical arguments" Iraq claimed title to the territory of Kuwait as a whole; see Sharma, *Territorial Acquisition, Disputes and International Law*, p. 271.
[30] The Security Council reacted directly toward the Iraqi violations of international law; see ibid., p. 278.
[31] Resolution no. 687 issued by the Security Council indicated formation of a boundary demarcation committee; see ibid.
[32] Before the adoption of the United Nations Charter which forbids annexation by force in Article 2(4).
[33] See Jennings and Watts, *Oppenheim's International Law,* p. 679; Shaw, *International Law,* p. 338; See also, more generally, Jennings, *The Acquisition of Territory in International Law* (1963). See chapters 3 and 4 for a full discussion of this aspect of the dispute.
[34] Sharma, *Territorial Acquisition, Disputes and International Law*, p. 30.
[35] Ibid., p. 30.

Economic, geographical, security, ethnic, religious, historical and other factors which are not recognised as having a legal nature by international law stand behind political territorial claims.

The *Falkland (Malvinas) Islands dispute* is a good example of the type of political dispute where a state claims title due to the loss of it by annexation which was legal at the time of loss, but is no longer legal according to contemporary international law.[36] Another way of utilising historical arguments is when the claimant state recognises that it had no legal title to the territory or island it claims, but it argues that, logically, title should be hers on historical grounds. For example, the claimant state may believe that it has title to the territory due to traditional or tribal ties.[37]

Geographically justified claims also fall with the category of political territorial claims. According to Sharma:[38]

> 'Geography claims take the form of arguments based on contiguity. It is asserted that a given area constitutes with that of a claimant, a geographic unit, and if it is separated it would cause severe deprivations to the claimant. Namibia's claim to *Walvis Bay*, for instance, prior to the 1994 treaty between South Africa and Namibia under which the former relinquished the bay, was partially based on such a premise.'

Thus some states may argue that title should belong to them on the basis of contiguity creating a stronger relation between the territory and the claimant state than the possessor state.[39]

Economic claims are witnessed in the Iraqi claims to the two Kuwaiti islands of Warba and Bubiyan. Iraq's claim against Kuwait in respect of the two islands was premised on the need for adequate access to the sea and its resources. [40]

Although claims may be political, it does not follow that they should be ignored in a legal settlement by arbitration or adjudication. Indeed arbitration agreements sometimes explicitly require tribunals to consider political factors. Sharma is of the view that:[41]

> 'While it is theoretically possible that a legal dispute or a political dispute concerning territory may be of an exclusive nature, there is no absolute dichotomy between the two and in practice arguments of a mixed nature - involving both legal and political claims - are

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[36] See chapters 3 and 4 on Yemeni claims on this basis.
[37] See chapter 4 on Yemeni claims based on tribal allegiance.
[38] Sharma, *Territorial Acquisition, Disputes and International Law,* p. 32.
[39] See chapter 4 on Yemeni claims based on contiguity.
[40] Ibid.
[41] Ibid., pp. 30 and 32-3.

> advanced. Quite frequently, legal claims are underpinned by or associated with other contentions based on history, geography, strategy and economics...
>
> Considerations of an undisputedly non-legal type- those based on administrative, social, geographical, historical and cultural links to the territory in question- have been taken into account by such non-judicial bodies as peace conferences and UN organs like the General Assembly in rendering decisions on territorial problems. At the same time even arbitral tribunals and judicial courts have not hesitated to take them into consideration and apply them as legal criteria to decide specific disputes. Indeed, in a large number of arbitration agreements, specific directions were given to tribunals to treat them as specific criteria either to be applied on their own or to modify the terms of the treaty. Also, some of these considerations were applied in a new guise: historical possession, for instance, subsequently took the form of *uti possidetis* and prescription.'

In fact, Prescott went further, suggesting that political disputes constitute the majority of territorial disputes:[42]

> 'Indeed, a large number of territorial disputes lack any significant legal component, and instead, are based on the view that for a variety of reasons the claimed territory should belong to the claimant state. On the other hand, when political settlements are made, for instance at a peace conference, arguments are sometimes given a flavour of legal doctrine. Arbitration treaties on territorial disputes frequently refer to both the legal and non-legal claims and counter claims, and the arbitrators are enjoined to take both sets of arguments into account while rendering awards, which they actually do.'

It is possible to conclude that title disputes commonly reflect both political and legal aspects and it is difficult to find a dispute of exclusively one nature. In most cases, an explicit legal dispute will also involve political motives. At the same time, even when a dispute is of a predominantly political character, most states will be able to advance some legal arguments. Therefore, the distinction between political and legal territorial disputes is in practice not as important as it may at first seem.[43]

(d) The concept of "territorial sovereignty" disputes

Despite the above definitions of boundary and territorial disputes, making the distinction between them in practice is not always an easy task:[44]

> 'It is not always simple to draw a clear distinction between a territorial dispute and a boundary dispute, since both are part of the general question of territorial sovereignty.'

In the *Island of Palmas Case,* arbitrator Max Huber indicated that both types of disputes belong to the broader concept of territorial sovereignty:[45]

> 'Territorial sovereignty is, in general, a situation recognised and delimited in space, either by so-called natural frontiers as recognised by international law or by outward signs of

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[42] See Prescott, *Political Frontiers and Boundaries* (1987) p. 90, as cited by Sharma, *Territorial Acquisition, Disputes and International Law*, p. 24.
[43] This can be observed in general international law disputes; see above.
[44] Al-Neyadi, 'The Maritime Zones of the United Arab Emirates with Particular Reference to Delimitation' (1997) *PhD Thesis, University of Edinburgh,* p. 61.
[45] *Island of Palmas Case* (1928) *Reports of International Arbitration Awards,* vol. 2, pp. 838-9.

> delimitation that are undisputed or else by legal engagements entered into between interested neighbours, such as frontier conventions, or by acts of recognition of States within field boundaries. If a dispute arises as to the sovereignty over a portion of territory, it is customary to examine which of the States claiming sovereignty possesses a title - cession, conquest, occupation, etc. - superior to that which the other State might possibly bring forward against it. However, if the contestation is based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereignty.'

Sharma notes that in this case Huber did not distinguish between boundary and territorial disputes because of the many similarities between the two. He further suggests that the failure to distinguish the two kinds of disputes contributed to the existing confusion of scholarly opinions:[46]

> 'Much of the current confusion is attributable to the fact (that) problems and policies regarding the two types of disputes are, in their external manifestation, a great deal alike. From one standpoint, there may not be any meaningful distinction between the two. Most broadly conceived, both boundary and territorial questions are a part of the larger question of territorial sovereignty, as suggested by the arbitrator in the Island of Palmas case.'

A detailed analysis of the Huber award reveals indicates that the arbitrator was trying to show the importance of effectiveness in deciding territorial sovereignty disputes, whether they concerned titles or boundaries:[47]

> 'Titles of acquisition of territorial sovereignty in present-day international law are either based on an act of effective apprehension, such as occupation or conquest, or, like cession, presuppose that the ceding and the cessionary powers or at least one of them, have the faculty of effectively disposing of the ceded territory. In the same way natural accretion can only be conceived of as an accretion to a portion of territory where it falls within its sphere of activity. It seems therefore natural that an element which is essential for the constitution of sovereignty should not be lacking in its continuation. So true is this, that practice, as well as doctrine, recognises- though under different legal formula and with certain differences as to the conditions required- that the continuous and peaceful display of territorial sovereignty (peaceful in relation to other to other States) is as good as a title. The growing insistence with which international law, ever since the middle of the 18th century, has demanded that the occupation should be effective would be inconceivable, if effectiveness were required only for the act of acquisition and not equally for the maintenance of the right. If the effectiveness has above all been insisted on in regard to occupation, this is because the question rarely arises in connection with territories in which there is already an established order of thing(s). Just as before the rise of international law, boundaries of lands were necessarily determined by the fact that the power of a State was exercised within there, so too, under the reign of international law, the fact of peaceful and continuous display is still one of the most important considerations in establishing boundaries between States.'

In fact, Huber cited cases of both boundary disputes and territorial title disputes although he did not explicitly distinguish between the two. However, it is suggested that he tacitly distinguished the two types of territorial sovereignty disputes as he had already classified

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[46] Sharma, 'Boundary Dispute and Territorial Dispute: A Comparison', p. 158.
[47] *Island of Palmas Case,* pp. 838-9.

title disputes as dealing with cession, whereas boundary disputes are concerned with fixing limits:[48]

> 'It is true that neighbouring States may by convention fix limits to their own sovereignty, even in regions such as the interior of scarcely explored continents where such sovereignty is scarcely manifested, and in this way each may prevent the other from any penetration of its territory. The delimitation of hinterland may also be mentioned in this connection.
>
> If, however, no conventional line of sufficient topographical precision exists or if there are gaps in the frontiers otherwise established, or if a conventional line leaves room for doubt, ... the question arises whether a title is valid *erga-omnes*, the actual continuous and peaceful display of State function is the sound and natural criterium of territorial sovereignty.'

In a reaction to this confusion, Sharma has stressed the importance of distinguishing between the two:[49]

> 'The necessity of distinguishing boundary problems as a whole from other territorial problems is amply stressed in current literature. Dr. Cukwurah, after emphasising this necessity, has observed that relevant rules of international law in the latter case "are to be found in the traditional prescriptions relating to the acquisition of territorial sovereignty, for example, by discovery, occupation, conquest, cession, or prescription.". These prescriptions provide answers to just one question: who is title? The learned scholar urges that the question of title must be resolved before the specification of the exact perimeters of such title itself becomes a matter of dispute. This analysis facilitates his conclusion that whereas "all boundary disputes are territorial questions" inasmuch as the territory of a state may thereby be affected, "the converse is not necessarily true."'

In some cases there is no disagreement over whether the dispute is to be classified as a title dispute or a boundary dispute. Where the disputing states make arguments based on the traditional modes of title acquisition, then clearly a title dispute is involved. Similarly, sometimes a dispute is clearly centred on the position of a boundary, in which case there is no doubt the dispute can be classified as a boundary dispute. For instance, the *Guatemala-Honduras Special Boundary Tribunal* was appointed to determine the exact position of the *uti-possidetis* line between the two countries.[50] In this case each country presented maps showing the line in its favour and the Tribunal was asked to resolve the dispute over the boundary.

Moreover, in some instances there may be a chain of disputes. In the *Qatar-Bahrain dispute*, for example, the two countries were disputing title to the Hawar Islands and Zubarah

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[48] Ibid., p. 840.

[49] Sharma, 'Boundary Dispute and Territorial Dispute: A Comparison', p. 160.

[50] See Weissberg, 'Maps as Evidence in International Boundary Disputes: a Reappraisal' (1963) *American Journal of International Law*, vol. 57, p. 782; see also the 1798 *Saint Croix River Arbitration* between the United States and Great Britain, as cited by the same author, at p. 783. In this dispute, the line defining the eastern limit of the United States was unclear and the arbitration tribunal dealt with conflicting maps in order to define the correct line.

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terriroty, which is located on the Qatar peninsula, as well as the delimitation of the maritime boundary between the two states[51].

There is an exception to this seemingly simple classification. As a boundary dispute is about a conflict of lines of delimitation of the boundary, where the disputed area between these two lines is large, the dispute regarding the area located between these two lines could be classified as a title dispute.[52] As Boggs says:[53]

> 'A boundary dispute sometimes involves disagreement just over minor details of location and the character of the line; but it is, much more frequently a territorial question because there is territory between any two alleged boundary lines.'

Hill agrees with Boggs, suggesting that the disputed area should have a special character:[54]

> 'Not all territorial disputes are mere boundary problems relating to the character of location of a line. The most complicated disputes usually occur over the position of large areas that may lie between two States. The distinction between the two types of controversies cannot be too arbitrary, for there is no accepted definition of the size or structure of the area that is too large to be designated a boundary problem. Certainly areas that have an identity of their own...cannot be regarded as boundary disputes; they are territorial disputes in a different and large sense.'

In consideration of the *Mosul dispute* between the United Kingdom and Turkey, a League of Nations commission also said:[55]

> It is true enough that the dispute relates ultimately to a frontier question, but ... it is clear that the territory between the lines proposed by the British and Turkish Governments respectively is too large for it to be said that the question is merely one of delimitation.

In other cases, there may be an overlap between the two types of territorial sovereignty dispute, leading to the confusion identified by Sharma above over the classification of such disputes. Often, states disagree over the classification of a dispute, one state invoking arguments based on title to territory, whilst the other state argues over the delimitation of the boundary. The *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad)* case is an example of this type.[56] In this case, Libya was arguing title to the Auzo Strip, based on various modes of title acquisition. On the other hand, Chad believed it was purely

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[51] See the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (2000) ICJ Reports.

[52] The dispute over the Rub' Al-Khali Desert may fall into this category; see chapter 2.

[53] As cited by Sharma, from Boggs, *International Boundaries* (1940) p. 31.

[54] As cited by Sharma, 'Boundary Dispute and Territorial Dispute: A Comparison', p. 3. In fact Cukwurah reaches a similar conclusion as he says 'It can safely be stated that whereas all boundary disputes are territorial questions, in the wide sense that the territory of a State may be affected, on the other hand, territorial claims as under above are not necessarily boundary claims.'; see Cukwurah, *The Settlement of Boundary Disputes In International Law*, p. 6.

[55] Report of the Commission, of the League of Nations, Document C. 400. M. 147. 1925-VII, p. 17. This was relied on by the Saudi Government in its submission in *The Buraimi Memorials 1955* (1987) p. 467.

[56] *Case Concerning Territorial Dispute* (1994) ICJ Reports.

a boundary dispute and it argued that the boundary had been defined by an international treaty. The ICJ decided the case in favour of Chad.

In such cases, the adjudicator is less interested in classifying the dispute as a title or boundary dispute, than in resolving the dispute taking into account all the relevant claims and arguments of the parties. Therefore, it is safer to simply classify the dispute as a territorial sovereignty dispute, as was done by Huber in the *Island of Palmas* award.[57] In sum, it is necessary to look at all the rules and arguments invoked by the disputing states.

3. Classification of the territorial sovereignty disputes between Saudi Arabia and Yemen

As mentioned above, the Saudi-Yemeni territorial sovereignty disputes can be divided into two sections, each of which was the subject matter of an international treaty purporting to determine the title to and delimit the boundary of each area. As will be seen, the validity and application of these treaties was challenged by either Saudi Arabia or Yemen. The goal of this section is to establish that the disputes can be classified as title disputes, in order to analyse them as such in the following chapters, although it does not deny that there are boundary aspects to the disputes as well.[58]

4. The territorial sovereignty dispute over `Asir, Jizan and Najran

(a) Introduction

The dispute over the territories of `Asir, Jizan and Najran can be examined in two distinct stages: before and after the conclusion of the Treaty of Taif in 1934. To diagnose the disputes this work examines in detail official documents and other evidence regarding the Saudi-Yemeni negotiations before the conclusion of the Treaty of Taif, in order to reach a conclusion on the proper classification of the dispute.

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[57] See above.

[58] Chapter 3 will evaluate the legal claims to the validity of the treaties involved, whilst chapter 4 will discuss the claims to title made by Saudi Arabia and Yemen.

(b) The pre-Treaty of Taif dispute

(i) The San`a negotiations

The origins of the dispute over these three territories have been thoroughly explored in chapter 1. It stemmed from the disappearance of what was known as the Idrisi State by virtue of the 1926 Treaty of Makkah[59] arguably giving Saudi Arabia sovereignty over parts of `Asir and Jizan.[60] At that stage the need for the delimitation of a Saudi-Yemeni common boundary appeared.[61]

In 1927, a year after the Treaty of Makkah, Saudi Arabia and northern Yemen started negotiations towards that end. During these negotiations, conflicting territorial claims regarding the former Idrisi State territory, including `Asir, Jizan and later Najran, appeared. One of the available official minutes reveals that:[62]

> 'On Saturday 14 - `Dhu-Al-Hijjah - [63] 1345 AH (corresponding to the 13th June 1927 AD), we [the Saudi delegation] received the Yemeni envoys at our residency in `San`a: Mr. Abdul-Allah bin Ahmed Al-Wazir[64], Mr. Ahmed Hashim and Mr. Mohammed Haider Al-No`aimi who is from Al-Mal`haa which is a county of `Sabia. Long negotiations were held between us ... The essence of the claims, which the Yemenis were emphasising during the negotiations, were that `Asir was part of Yemen and His Majesty the Imam [King Yahya of Yemen] would not give up any part of it, [including] the Idrisi province of Tihama [Jizan] as the Idrisi had stolen those lands. We informed the Yemeni delegates that the Idrisi lands were part of `Asir 's Tihama and `Asir was not a part of Yemen... the Imams of the Zaidis had no rights supported by historical evidence ... [in addition] the limit of the Idrisi province extended from Mukha to Zubaid to the centre of Bajal ... and this area, within these boundaries, formed an inseparable part of `Asir. It had been under [the control of] Sayed Mohammed Ali Al-Idrisi during his reign and it was now included within the boundaries included in the Treaty [of Makkah] between His Majesty [Saudi King Abdul-Aziz] and Sayed Al-Hasan [the Idrisi ruler]. Thus we consider it all as a part of His Majesty's rights and we would ask that those areas which were taken by the Imam Yahia are given back [to the King Abdul Aziz].'

Given the definition of territorial dispute and boundary dispute discussed above, it is clear from this document that there was a dispute over the question of title to the former Idrisi territory under Saudi control, including `Asir and Jizan, and other parts of the former Idrisi territory, for example Mukha and Zubaid, which had fallen under Yemeni control. Najran

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[59] See Appendix 1.9.

[60] The Idrisi also had influence over the people of Najran during the 1910s; see the section on the Idrisi in chapter 1 for more details.

[61] Al-Nu`aim, *The Saudi Political Boundaries: Looking towards stability (in Arabic)* (1999) pp. 20 and 40.

[62] Document 1, 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya', (1934) *The Green Book,* p. 4. All documents have been translated by the author.

[63] `Dhul-Al-Hijjah is the twelfth month of the Hijra calendar. The year consists of 12 lunar months.

[64] It is noted that Al-Wazir signed the Treaty of Taif in 1934 on behalf of Northern Yemen.

was also disputed, although the Idrisi ruler had recognised, in the 1920 Saudi-Idrisi Treaty,[65] Saudi control over the Yam tribe living in Najran.

It is noted that it was Imam Yahya who told the Saudi delegation that it was his country which wanted to change the position of the boundary in a way that would return lands under Saudi control to the Imam.[66] The desire of establishing a boundary between Saudi Arabia and Yemen, mentioned by Al-Nu`aim, in fact led to a title dispute over the three provinces, in addition to Mukha, Zubaid and other cities today located in Yemen that were at that time claimed by Saudi Arabia as part of the former Idrisi State.

The title dispute was again tackled on Thursday 28-6-1346 AH (corresponding to the 23rd December 1927 AD).[67] The Yemeni envoys said that they were authorised by the Imam to define boundaries. The Saudi delegation replied that the boundary of their eastern lands (Najran) was already known and they wanted to end the dispute with Yemen over the Idrisi Province boundary. However, the Yemeni delegation rejected the Saudi arguments that they had been protecting the Idrisis and they denied that the Idrisis had any rights to the area. They added that Yemen's boundaries were known according to history and geography. At the next session, held on 1-7-1346 AH (corresponding to the 26th December 1927 AD) the Yemeni delegation repeated that the Idrisis were foreigners and had no lands except those Yemeni lands which they 'stole' and they argued that those lands should be returned to Yemen.[68]

The two parties to the dispute again revealed the legal basis of their title claims to the Idrisi Province during the session held on 6-7-1346 AH (corresponding to the 31st December 1927

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[65] For the full text of the treaty (in Arabic) see Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934),* p. 295-296. See also Al-Zulfa, *Asir During The Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State* (1995) p. 201-202. According to this treaty, the Saudi and Idrisi rulers agreed to establish friendly relations and agreed on a vague division of the tribal lands they had control over. According to that division, Al-Idrisi recognised that Imam (later King) Abdul Aziz would be ruler over tribes of all of Yam (living in Najran), Wadah and their followers, Bani Jama`, Sahar, Sharief, Qahtan, Rufiadh, Obaidah, Bani Bisher, Bani Talaq, Sharan, Bani Sheher, Ghamid, and Asir Ghamid and other tribes that came under Abdul Aziz's jurisdiction. In turn, Imam Mohammed bin Ali Al-Idrisi was recognised as ruler of Tihama and the tribe of Rijal AlMa` and others under Idrisi control.

[66] Document 1, 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya' (1934) *The Green Book,* p. 4.

[67] Document 3, ibid., p. 8.

[68] Ibid.

AD) as well as their claims to the location of the boundary line. The minutes of the session read:[69]

> [The head of the Yemeni delegation] said tell us about the boundaries between the two Governments. [The Saudi delegation replied] the boundaries are clear; the eastern boundary shall be from Najran, the lands to the north belong to His Majesty the King [King Abdul-Aziz] ... from Waelah (tribe) and Yemen (south) shall belong to Yemen and from Ibn `Sab`han to the south shall belong to Yemen and from there to the north shall belong to `Asir and from there to Tihama belongs to Saudi Arabia. As to tribes, those who have not paid Zakah [a religious tax] to anybody, they belong to His Majesty the King and the boundary shall be from Aaroo [mountain]. Areas to the north shall belong to `Asir. The Tihama boundary (according to the authorisation) shall be Midi (which is located) between the two Governments and this is what we see as appropriate.

This illustrates that Saudi Arabia claimed title to tribal lands which did not pay *Zakah*, or religious tax, to Yemen, since Yemen had not practised sovereignty there, as *Zakah* collection is a sovereignty duty which only states perform.[70]

During the session held on 9-7-1346 AH (corresponding to the 3rd January 1928 AD) the Yemeni delegation made a dramatic change in their negotiating position, indicating a possible compromise. They were prepared to accept the Saudi suggestion regarding the delimitation or allocation of the boundary, recognising the title to `Asir and Jizan to Saudi Arabia, if in return Yemen kept the Idrisi lands which the Imam occupied before the Idrisis sought Saudi protection, *i.e.* Mukha and Zubaid.[71]

At that stage, it seemed that the two delegations were getting closer to a settlement of the title dispute and it could be safe to assume that the parties had resolved their title claims dispute. Based on this assumption the parties were left with the task of agreeing on a boundary line that would accord with the already agreed allocations of tribes and territories. If a disagreement occurred it would be assumed that it would relate to delimitation. However, the title dispute resumed when Yemen sent a delegation to Makkah, Saudi Arabia, whose members were different from those who had accepted the Saudi proposal at the end of the San'a negotiations.

(ii) The Makkah negotiations

Based on the progress achieved in the San'a negotiations, the two delegations reconvened on 15-12-1346 AH (corresponding to the 4th June 1928) in Makkah, Saudi Arabia with the

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[69] *S*ession held on 6-7-1346AH (corresponding to 31st December 1927 AD) in `San`a, Ibid., p. 9.
[70] Collection of zakah is briefly tackled in chapter 4 in the section examining claims of effective occupation.
[71] Document 3, Sunday 9-6-1346 AH (corresponding to 4th December 1927 AD), ibid., p. 10.

purpose of continuing their discussions. They were expected to discuss delimitation of a line that would respect the latest mutual verbal agreement reached at the end of the San'a negotiations. However, it should be noted that the Yemeni delegation's stance changed with regard to its approval of the Saudi proposal reached in San'a. This unexpected shift in the Yemeni delegation's stance was reported by the Saudi delegation to King Abdul Aziz:[72]

> 'We met with the Yemeni delegation twice ... we informed them what had happened during the San`a negotiations on the boundaries and they said they had no detailed knowledge about what occurred in San`a; they asked us to tell them more about the boundary line agreed. We informed them that the boundary of the Idrisi Province in Tihama and `Asir's mountains shall remain as it stands and each state will have what it currently controls ... they asked us to wait until they had discussed this among themselves. On the next day, they informed us that they did not have the authority to accept the *status quo* in either Tihama or `Asir.'

It is important to note that the Yemeni delegation members[73] who accepted the Saudi suggestions in San'a were not those who went to negotiate in Makkah four months later. The Imam had sent envoys to Makkah who appeared not to have adequate knowledge of the latest progress in the negotiations. It could also be possible that the Imam was not satisfied with the agreement that Al-Wazir was close to achieving with the Saudis, notwithstanding that this would secure a Saudi waiver of claims to lands conquered from the Idrisi. Whatever the motivation for this tactic, it meant that the issue once again became a title dispute rather than a boundary dispute.

Prior to this round of negotiations, the Yemeni delegation had expressed its concerns to the Imam. It noted that the Imam had not designated a head of the delegation. The complaint was contained in a telegram sent from Makkah by the Yemeni delegates addressed to the Imam in Yemen:[74]

> 'A committee without a head suffers disorder; we beg a definite decision from you (assigning one of the members to head the Yemeni delegation) or accept our excuses (from this duty).'

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[72] Document 7, minutes derived from the Saudi delegation report dated 15-12-1346 AH (corresponding to 4th June 1928 AD), ibid., p. 13.

[73] The Yemeni delegation changed its members three times. In the first session held in `San`a on 14-12-1345 AH (corresponding to 14th June 1927 AD) the Yemeni members were Abdul Allah Al-Wazir, Ahmed Hashim, and Mohammed Al-No`aimi. On 27-6-1346 the Imam chose new delegation members: Judge Abdul-Allah Al-`Amri and Judge Abdul-Kareem Al-Mo`ttahar. This new delegation negotiated in `San`a with the Saudi delegation from 28-6-1346 until 1-8-1346 (corresponding to 24th January 1928 AD). This is the Yemeni delegation which accepted the Saudi suggestion of the boundary line. However, the Yemeni delegation members who went to Makkah after 4 months were again different. The Yemeni delegation members were: Qasim bin Hussein, Mohammed bin Mohammed Ziyara, Abbas bin Ahmed bin Ibrahim and Abdul-Allah bin Ali bin Mann`a. See Documents 1 at p. 3 for the names of the members of the first Yemen delegation, Document 3 at p. 7 showing names of the second Yemen delegation, and ibid. p. 13.

[74] Document 8, ibid., p.14.

In response, the Imam expressed his regret for the state of disorder but warned the delegation to behave decently and he would punish anyone who was found to be uncooperative.[75] It is important to note that neither telegram mentioned the Saudi-Yemeni argument about title and the boundary line. If the Yemeni delegation had no knowledge of the San`a agreement on the boundary and title recognition, one would have expected that they would have asked the Imam for instructions on what to say to the Saudis and for up-to-date information about the Saudi-Yemeni agreement in San`a.

The above-mentioned telegrams and reports indicated that the perception of the nature of the dispute between the two states was fluctuating between a title dispute and a boundary dispute. The Saudi claims revealed a belief that the dispute was over boundary delimitation as they argued that the title argument was settled in San`a in 1346 AH (1928 AD). On the other hand the Yemenis were continuing to claim title to the disputed territories. There is nonetheless an opposing attitude which would qualify the exchanges as a dispute within the definition of the International Court of Justice discussed above.[76]

(iii) The Aaroo Mountain award

The fact that the delegations of both States failed to resolve the title issues meant that they could not agree on a boundary line. The failure also increased the possibility of the emergence of a conflict between the two states. This would inevitably lead to a scenario similar to that of 1932, when the Imam's troops had occupied an area known as Al Aaroo or Aaroo Mountain located in the undefined boundary between Saudi-claimed territories of *`Asir* and northern Yemen. Wright identified the location of the disputed area and narrated the developments of the incident:[77]

> 'Aaroo Mountain is on the boundary between the possessions of Abdul-Aziz (Ibn Saud) and the Imam (King of Yemen). The Imam's soldiers advances to occupy it, claiming that the people of Aaroo had asked for that in order to teach them religion. There took place negotiations for the settlement of the affairs when the negotiators met on the date of 6-15-1350 of the Hegira (1932), but they did not reach a conclusion.
>
> At last the Imam Yahya wired to King Ibn Saud asking for arbitration and leaving the matter for His Majesty to decide it as he saw fit and accepting his decision as final. The decision of Ibn Saud was against himself whereby he conceded the mountain in order to put an end to differences.'

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[75] Document 9, ibid.

[76] For further explanation of the concept of dispute under international law read, see the beginning of this chapter.

[77] Wright, 'The Arbitration of the `Aaroo Mountain' (1939) *American Journal of International Law,* vol. 33, p. 356.

Wright was of the view that the arbitration was not based on legal reasoning, as explained in the following citation:[78]

> In the present case the award seems not to have been given on a juridical basis. Ibn Saud, the arbitrator, out of respect for his opponent's trust in him, gave an award against both his interests and his convictions, thus manifesting a spirit of chivalry uncommon in international transactions.

King Abdul-Aziz arbitrated the dispute in favour of the Imam. He cabled the decision directly to the Imam in the following words:[79]

> 'Your telegram through the Plenipotentiaries has arrived. Thank Your Eminence for your sincerity for peace and Islam and your desire for the harmonious agreement of the Moslems. You know that Moslem and Arabian rules demand that a man should display all the power and honour that he possesses in order to fulfil his duty. It is not unknown to you that we undertook to safeguard the possessions of the Idrisi in the common interest and because of the previous protection between ourselves and Mohammed (the Idrisi) necessitated by the interest of our country.
>
> We have disclosed this fact to Your Eminence and it has become known to all. It is known to you that it is our habit which God granted us to fulfil our promise. We have looked over the evidence advanced by the Deputies of the two Kingdoms and have found some unexpected contradictions. Your plenipotentiaries raise it because there is no point of doubt nor anything akin to that. But the error of deputies can be erased by the harmony of brotherly forgiveness. Therefore, according to your choice of Your Brother as arbitrator and your good confidence in him, it has become my duty to take the responsibility from all sides - whether for the agreement between the Idrissi (Idrisi) and ourselves or for the country of the Idrissi (Idrisi) and its people as well as the people of Najd, Hejaz and `Asir, who always like to fulfil their obligations and defend their rights. Therefore I take this step, which is worthy of Your Eminence - and because of love for peace among the Moslems in general and between our two Kingdoms in particular - and proclaim that we concede the Aaroo (`Aro Mountain) to you, hoping that God may guide the Moslems and the Arabs and the two Kingdoms to peace and tranquillity. We have informed our plenipotentiaries thereof. May God lead all to do the best.'

Imam Yahya accepted King Abdul-Aziz's Award, saying:[80]

> 'After receiving Your Eminence's telegram we have commanded the Warden of Sakken that discussions in the affair of Fifa and Bani Malik shall cease and no acceptance shall be given to any of the claims by the people of Bani Malik or Fifa ... although our wish was broader than what the Award included (only Aaroo Mountain) we consider this to be the end of the affair ... we prompted your envoys to take advantage of the agreement between ourselves to decide on the incidents involving the people of the borders in a serious and amicable method and to consider who is from the `Horrath (tribe), who belongs to Khawlan (area), who is from Bani Marwan (tribe) and who belongs to Jizan (area), as it is better that each clan returns back to the people to whom it belongs.'

This telegram suggests that the Imam waived title claims to areas located north of Aaroo Mountain, including Jizan, `Asir and Najran. Therefore, it could be argued that there were no further title claims regarding the lands to the north. According to this view, any further

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[78] Ibid., p. 358.
[79] This a translation of the cable mentioned in ibid., pp. 357-358. The original text in Arabic is Document 15, ibid., pp. 21-22.
[80] Document 16, ibid., p. 22.

dispute between the two leaders should only have involved the delimitation, demarcation or administration of the boundary line but not the allocation of title.

Following the resolution of the Aaroo title dispute, the next logical step was to draw a boundary line between Aaroo Mountain (as part of the Imam's territory in northern Yemen) and Ibn Saud's territory to the north of Aaroo. Although the states did not agree on a particular boundary line, they did agree on a number of provisions related to the border. The 1350 AH (1932 AD) Agreement[81] included provisions on the administration of the Saudi-Yemeni border and extradition of escaped criminals. The Agreement was ratified by the two parties through an exchange of telegrams.[82]

Further to this agreement, on 8-6-1351 AH (corresponding to the 9th October 1932 AD), King Abdul-Aziz sent a letter to the Imam Yahya declaring his desire to draft an agreement which delimits clearly the line of the boundary and arranges the administration of the border.[83] In reply, the Imam agreed to the King's requests including the delimitation of the boundary and permanent enforcement of the boundary line to be concluded by the two state envoys.[84] He asked the King to send envoys with more authority in order to reconsider the boundary with a view to achieving a mutually satisfactory outcome.[85]

(v) The second San`a negotiations

Before the Saudi delegation arrived in San`a to continue discussions on the boundary, however, Yemeni troops invaded Najran and the Imam claimed title thereto. Nevertheless, the two delegations still met in San`a. The first session was held on Monday 17-3-1352 AH (corresponding to the 10th July 1933 AD) during which the Saudi delegation expressed its aim to be the delimitation of the boundary between the two states through a clear, decisive description, in furtherance of the 1346 AH (1928 AD) bilateral agreement and the Aaroo Mountain Award of 1350 AH (1931 AD). Although the Yemeni delegation agreed with the Saudis on the need for a clearly defined boundary line, they contested the validity of the 1350 AH Agreement. The Saudi delegation replied that it was ratified by the two leaders by an exchange of telegrams[86] and therefore the boundary issue was decided definitely. In reply to this, the Yemenis alleged that the telegram only dealt with the arbitration of the Aaroo

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[81] See Agreement in Appendix 1.10.
[82] Document 18 at p. 24 and Document 19 pp. 24-25, ibid.
[83] Ibid.
[84] Document 24, ibid.
[85] Ibid.
[86] Document 29, ibid., p. 37.

Mountain dispute. In addition, the Yemenis again argued that the Idrisi had illegitimately annexed Yemeni lands and therefore Yemen could claim valid title to all Idrisi lands, including `Asir and Jizan.[87]

It is noted that the statements by the Yemeni delegation during the negotiations were in contradiction to the previous correspondence between the Imam and the King. It should be remembered that the Saudi envoys were sent following a request from the Imam to discuss the boundary and the Imam had expressly asked the King to send the Saudi envoys with the authority to negotiate the boundary. The Yemeni negotiating tactics at the second San`a negotiations can be interpreted as an attempt to characterise the dispute as one relating to title.

At another session on Wednesday 19-3-1352 AH (corresponding to the 12th July 1933 AD) the Yemenis finally admitted that the 1350 AH (1931 AD) Agreement did exist, but they raised a new argument by claiming it had not been ratified. The Saudis pointed to the ratification by exchange of telegrams between the two leaders.[88]

The Saudis further argued that history demonstrated that the true Yemen had no title to the former Idrisis' lands. The Saudis recalled the history of the true Yemen from the time of the Prophet Mohammed (GPUH) in the first century of the AH calendar to the present day, including the era of re-emergence of the Yemeni self-governed states in 204 AH (809/810 AD) during which time the Imams of Yemen, it was claimed, had never had authority in the lands protected by the Saudis on behalf of the Idrisi and then annexed by Saudi Arabia.[89]

The Saudi answer made it clear that they considered the dispute a boundary dispute, not a title dispute, even though they mentioned the possibility of a slight adjustment of the border allocated according to previous agreements. Nevertheless, there was no possibility of cession of large areas of land or talks over title.

The Saudi delegation, having been in San`a, sent a letter dated 20-3-1352 (corresponding to the 13th July 1933 AD) to the Yemeni delegation, asking them to inform the Imam of the Saudis' concerns regarding the areas inside Najran which had been recently occupied by

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[87] Ibid., p. 41.
[88] Ibid.
[89] Ibid.

Yemeni troops.[90] The Saudis urged the Yemenis to inform them of the Imam's answer in the coming session scheduled for a few days later.[91] The Imam's answer rejected the Saudis claim that Najran was Saudi territory. [92] The Imam once again indicated that Yemen perceived the dispute as a title dispute. Although the Yemenis claimed title to Najran and its people, they admitted that they had occupied it due to Yami attacks against the Yemeni tribes.[93] Moreover, the Yemenis admitted that Yam was not under Yemen's control when those alleged Yam attacks took place. In this regard they stated:[94]

> '... They were, in fact, in the recent years not under control and they have been deleterious and causing division. The Imam attempted to stop them at their borders. But they are desirous for invasion, especially as they are on the boundary.'

It is suggested that the Yemenis' admission that the Yam tribe was located on the border and was not under the Imam's control until the invasion contradicts the claim that Yemen had power over Yam and the Yemeni claim that there was no boundary. It can also be argued that this statement divulges Yemen's knowledge that there was a boundary, agreed or *de facto*, between Yemen and Najran.

The Yemeni envoys wanted to take advantage of the fact that the Imam's troops were occupying Najran to support their title claim to Najran and they therefore demanded that the delimitation of the boundary acknowledged the new status quo. This argument was not relevant to their claims over the Idrisi Province since Yemeni troops were not occupying `Asir or Jizan in 1350 AH (1931 AD). However, they also continued to assert that these territories had been stolen by the Idrisis and the Saudis were therefore asked to return them.[95] It is suggested that there is a certain degree of double standards and contradiction in these title claims. Yemen wanted to claim title to Najran according to the status quo whereas they also claimed that `Asir was stolen and must be given back.

It is suggested the Imam's title claim to Najran following his previous tacit recognition of Saudi Arabia's title to the land of the tribes of Yam living in the territory of Najran was similar to Iraq's title claim to Kuwait because in both cases those claims were justified on alleged legal and political ties despite a reported former dropping of the claims. To illustrate, Iraq had recognised Kuwait as a full sovereign state and the two states had exchanged

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[90] Document 31, ibid., p. 46.
[91] Ibid.
[92] Document 32 including minutes of the third session held on Monday 24-3-1352 AH (17th July 1933 AD) between the envoys of the King and the Imam, ibid.
[93] Document 32, ibid., p.47
[94] Ibid., p. 49.
[95] Ibid.

ambassadors in the 1960s but in 1990 Iraq invaded Kuwait, justifying it as annexation of a territory which was a part of Iraq.[96]

Due to the standstill in negotiations the Saudis asked the Imam to allow them to go back to Saudi Arabia. The Saudi delegation justified their desire to go home on the basis of Yemeni persistence in changing the nature of the negotiations from a boundary dispute to dispute over title to `Asir, Najran and Jizan. They said this clearly to in a letter to the Imam:[97]

> '... We have heard that the treaty [signed in 1350 AH corresponding to 15 December 1931] was concluded between Your Eminence and His Majesty after the *Aaroo* incident deciding the basic boundary points. The Agreement has been enforced and respected by our Government in good faith and our Government wants to build our new policy thereon... To you, it is not a treaty but ... a piece of paper which you apply or reject as you wish. We also understood from your envoys, which shocked us, that that the principle of good faith[98] is but a temporary principle which is applied if it meets your interests or mood, otherwise it is ignored.
>
> Your Eminence shall not be surprised by our petition for permission to return to Saudi Arabia and our suspension of the negotiations, if he (you the Imam) knew that your envoys have asked our state to grant to you the Province of `Asir and others ... under the pretext of

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[96] Sharma, *Territorial Acquisition, Disputes and International Law*, pp. 271-279. He explained: 'Strictly speaking, the dispute between Iraq and Kuwait is over their common frontier. Iraq claims include certain adjacent islands, especially Warba and Bubiyan, presently under Kuwaiti possession. This dispute was widened when Iraq started challenging the status of Kuwait on the basis of historical arguments.' However Kuwait denied Iraq claims based on various grounds including agreements signed by Iraq recognising Kuwait independence: 'Kuwait also asserts that if it was part of Iraq, how could Iraq conclude agreements with Kuwait in 1913, 1932 and 1963, that last one recognising the independence and sovereignty of the state of Kuwait.' Furthermore, it is reported that 'The Iraq claim of continued maintenance of sovereignty is also refuted by Kuwait. Attention is drawn to the Iraqi recognition of the present borders between the two countries in 1932 through the exchange of letters of 21 July and 10 August 1932 between the Iraq Prime Minister and the Ruler of Kuwait reaffirming the existing frontiers between Iraq and Kuwait, which were earlier defined in an exchange of letters, dated 4 April and 19 April 1923, between the Kuwait Ruler and the British High Commissioner for Iraq. These agreements explicitly stated that the islands of Warba and Babiyan [Bubiyan] appertained to Kuwait. Although the borders remain undemarcated, the definition of boundary stands out.' See ibid., p. 274.

[97] Document 35, 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya', (1934) *Green Book*, p. 54, showing a letter from the Saudis envoys to the Imam dated 1-4-1352 AH (24th July 1933 AD). In this letter the Saudis asked the Imam for the second time for permission to go back to their country as the Imam refused to let them go home when they asked their Yemeni counterpart to get them permission from the Imam in letter no. 44 dated 26-3-1352 AH (19th July 1933 AD). The Imam's first rejection was stated in his letter dated 1-4-1352 AH (24th July 1933 AD) to the Saudi envoys as he justified his rejection due to not reaching an agreement and because he did not want them to leave before reaching that agreement. Otherwise foreign media, and peoples would get a bad impression; see the Imam letter text at Document 34, 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya'; ibid., p. 54. King Abdul-Aziz wired a cable to his delegation in Yemen inquiring about their silence and disconnection between him and the Saudi envoys. The King said to his envoys 'we have not telegraphs since date of (3-1352 AH), when communications with have been disconnected during the whole of these days. Contact us immediately'; see Document 36, ibid., p. 56.

[98] This principle is mentioned in the first verse of the Fifth Chapter in the Holy Quran. The holy verse reads '[1] O ye who believe! Fulfil (all) obligations'.

> historical justification which cannot sustain any serious examination by someone who knows the political and social history of the Arabian peninsula.
>
> In addition, we note your absolute refusal to negotiate on the Najran incident; it should not be surprising to you that we believe that Najran is inside our borders... do not be surprised therefore when we say that no expected result is visible in the light of this standstill and due to this, we want to return to our country.'

Although the Saudi delegation thereafter returned home, the two leaders continued to correspond on the issue. The correspondence reveals that the dispute concerned title from the Yemeni point of view, while it was a matter of a boundary dispute from the Saudi point of view. In order to prove their case, the Saudis made it clear to the Imam that they were not claiming title to lands whose title and control had previously been in the hands of the grandfathers of King Abdul-Aziz during the First Saudi State in the eighteenth century[99] and that they had waived any claims to such territories now inside Yemen.[100] A further letter from King Abdul-Aziz again revealed that he considered the matter to be a boundary dispute although he expressed a willingness to consider giving up title to Najran.[101]

The Imam's contradictory behaviour continued when his troops started to intrude inside `Asir and Jizan.[102] In addition, the Yemeni forces started to burn property of the Yam people and to provoke Saudi tribes inside `Asir and Jizan to rebel against Saudi authority. In this way the Imam appears to have been trying to create a new status quo which could extend his power over Saudi lands and tribes, following which he could ask the King to arbitarte the disagreement considering the new status quo.

The Saudi delegation explained these tactics in a report sent to King Abdul-Aziz:[103]

> 'The Imam hates and fears us but he is cautious not to fight us face to face. The plan he follows is in summary: he provokes tribes and inhabitants belonging to us and employs for that purpose various means such as supporting our citizens who seek refuge in Yemen and the callers of the Zaidi sector, who have connections with persons inside our lands. Once it is appropriate, he captures a part of our domains by war, conspiracy or pretension, asking Your Majesty to arbitrate as he did in the incident of *Aaroo*. In addition, procrastination, deception, and postponement are amongst effective means he uses...'

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[99] See the section on the Saudis in chapter 1.

[100] Document 34, 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya', (1934) *The Green Book,* p.54.

[101] Document 63, ibid., pp. 86-88.

[102] See section on the Imamate in chapter 1.

[103] Document 51, 'Declaration on the Relations between the Kingdom of Saudi Arabia and Imam Yahya', (1934) *The Green Book,* pp.73-75, showing excerpt of the Saudi report sent to King Abdul-Aziz regarding results of the Saudi-Yemeni negotiations outcomes in San`a between Saudi envoys from one side and the Imam and his envoys on the other side. The report was dated 1-7-1352.

By this time, the King had formed a view about the tactics of the Imam and he indicated his rejection of these methods of occupying lands and then asking for title to them under the pretext of arbitration. The King instead insisted on an immediate solution:[104]

> 'The solution for the Najran problem is, which is the last offer I make to you, that Najran, including its borders, is to be a neutral land between us, which neither of us shall possess nor intervene in its local affairs and its people shall live as they have done since the time of our fathers and grandfathers and our reign and your reign ... if the people of Najran do harm to us which requires disciplining, we shall co-operate and call for peace and good behaviour. If they have complied with the call, then thank Allah (God). If they have not and the matter calls for punishment, then we shall co-operate until they agree to behave and abstain from evil deeds.'

The King in a telegram dated 15-8-1352 AH (corresponding to the 3rd December 1933 AD) reiterated his demands and asked the Imam to agree to:

1) Delimit the boundary in a definite method, recorded in writing;

2) Classify Najran as a neutral territory between the two states; and

3) Return the Idrisi family to Saudi Arabia according to the 1350 AH Agreement.[105]

(vi) The Abha negotiations

On 1-9-1352 AH (corresponding to the 18th December 1933 AD), the Imam sent a telegram to the King suggesting that the status quo be kept as a temporary solution:[106]

> '... by conclusion of a fraternal, peaceful, religious treaty for a period of twenty years each party shall retain what is under his control...'

It is noted that the Imam did not mention concluding a permanent boundary delimitation treaty although boundary treaties, as will be see in detail in chapter 3, are of a permanent nature. The King accepted that a treaty of twenty years be signed.[107] However, the Imam again rejected the King's suggestion on Najran:[108]

> '...with regard to our brother's suggestion that the Yam's lands belong to neither party, this is a problem for us as they are Yemeni lands, and no one else has authority over them...'

The Imam also asked the King to send envoys for the conclusion of the treaty.[109] He accepted that that treaty was to be published in the media. The King replied, suggesting that their envoys meet in Abha, capital of `Asir.[110] The two leaders exchanged several telegrams

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[104] Ibid., pp. 81-82.
[105] Document 63, ibid., pp. 85-86.
[106] Document 70, ibid., p. 92.
[107] Document 71, ibid., pp. 92-93.
[108] Document 101, ibid., pp. 112-113.
[109] Document 103, ibid., pp. 114-115.
[110] Document 104, ibid., p. 117.

regarding the arrangements for the meeting.[111] The Imam's envoys arrived in Abha on 2-11-1352 AH (corresponding to the 16th February 1934 AD) and the first round of negotiations started on 5-11-1352 AH (corresponding to the 19th February 1934 AD).[112] During the six negotiating sessions the delegations focussed on title to the disputed territories of Najran, and the former Idrisi province in `Asir and Tihamah including Jizan.

During the course of the negotiations, the Yemenis dimissed any previous boundary allocations. Ibn Al-Wazir, on behalf of Yemen, denied the existence of any agreement regarding boundaries and he propounded Yemeni claims to `Asir, Tihamah and Najran.[113] Once again, the Saudis insisted that boundaries were allocated according to sessions held in San`a in 1346 AH (1928 AD) and the telegrams exchanged in 1350 AH (1931 AD) regarding the Aaroo incident. They said that no title dispute existed and the matter was a boundary delimitation problem, in clear contrast to the Yemeni arguments. Ibn Al-Wazir replied by saying that the Aaroo Award solved only that incident; it did not deal with other matters and he recalled that since the pre-Islam period, Yemen had included `Asir, Najran and Tihamah. The Saudis countered that the Imam had, in a telegram to the King, admitted Saudi title to these territories. They referred to the exchange of telegrams which said that the two states would decide the issue of the boundary according to the status quo. The Saudis argued that any Yemeni title claims to `Asir, Jizan and Najran were inconsistent with these telegrams.

The Yemeni delegation, during the second round of negotiations held on 7-11-1352 AH (corresponding to the 21st February 1934 AD), claimed that Najran was a former part of Yemen and the Imam had been controlling the area for thirty years.[114] Ibn-Al Wazir supported his claim that Yemen had been controlling Najran by making a reference to Yami hostages held by the Imam. In addition, he said that the Imam had received many letters from the Yami people asking Imam Yahya to protect them from the Saudi troops. Ibn-Al-Wazir added that King Abdul-Aziz had waived his desire to control the Yami people who belonged to the Isma`eli sect, not the Sunni sect, and there was no political nor religious ties between the King and the Yami.

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[111] See Documents 107-118, ibid., pp. 119-131 including a series of telegrames between the King and the Imam from 29-9-1352 to 29-10-1352.
[112] Ibid., pp. 133-134. The Saudi envoys were: Turki ibn Ma`dhi, Abdul-Wahhab Abu-Nogtah, Mohemmed ibn Dulaim, Ibn Zahim, and Chairman of the Saudi side Fu`ad `Hamzh. The Yemeni side was chaired by Abdu-Allah Al-Wazir.
[113] Document 124, Ibid., p. 135.
[114] Document 127, ibid., p.138.

The Saudi envoys rejected all that Ibn Al-Wazir had said. They argued that Najran had not been part of Yemen since the pre-Islamic period as the Saudis had gained control over Najran when they established their first State.[115] That these ties continued during the Second Saudi State was evidenced by a letter[116] dated 1279 AH (1862/3 AD) sent by Imam Faisal bin Turki, the Saudi King, to the leaders and the people of Yam announcing Saudi protection and security co-operation.[117] Moreover, the Saudi indicated that their title to Najran was recognised by Yemen in the 1346 AH (1928 AD) negotiations taking place in San`a and in the course of the Aaroo incident. Furthermore, it was argued that the Imam had exercised no power in Najran until he invaded the area a few months before. The people of Najran were under King Abdul-Aziz's control and it was this alone which prevented them from attacking the Yemeni people. The Saudis also referred to the collection of Zakah, a religious annual tax collected by the recognised leader in an Islamic state, as further proof of the assertion of sovereignty in the area. Neither the Turkish Ottoman nor the Imam himself had objected to Saudi rulers collecting Zakah in Najran. Regarding religion, the Saudis said that they did not care about the unseen beliefs of the Yami as long as they perform Islamic duties and practised Islamic ceremonies. In addition, the Saudis referred to the Imam's practices of sovereignty. When the Imam was conducting battles against his citizens he did not need to ask permission from the King as the Imam was free to do whatever he wished to his own people. However, when he wanted to launch a military campaign against Najran, he used to ask for permission from King Abdul-Aziz before he went ahead. The Saudi considered the existence of Yemeni troops in Najran as ``Gasb' which means 'taken illegally by force'. The Saudi delegation concluded:[118]

> 'Thus, we consider the Imam's troops deployment inside Najran is a forced deployment and null and void. We demand that the situation should be restored to as it was before...'

In the following sessions, the two sides continued to disagree, often repeating the same evidence and arguments. During the fifth session held on 15-11-1352 AH (corresponding to the 1st March 1934 AD), the Saudi delegation demanded:

1) The delimitation of the boundary line;
2) That each state abstained from intervening in the internal affairs of the other;
3) The return of the Idrisi family to Saudi Arabia; and
4) The resolution of the Najran issue.[119]

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[115] Ibid.
[116] Document 153, ibid., p. 176.
[117] Document 127, ibid., pp. 138-139.
[118] Ibid.
[119] Ibid., pp.142-143, including report of the fifth session held on 15-11-1352.

Ibn Al-Wazir on behalf of the Yemeni delegation said:[120]

> '... the two sides form one body and there is no need for a boundary allocation (delimitation), because it is known that what each side has under his control belongs to him and this has been agreed between the two Kingdoms.'

The Saudis considered the Yemeni answer vague and believed it was best to end the negotiations.

(vii) The breakdown of negotiations

Following the failure of the negotiations, the two leaders continued to send each other telegrams arguing whether the boundaries were allocated or not. On 19-11-1352 AH (corresponding to the 5th March 1934 AD) the Imam complained to the King about a lack of cooperation from the Saudi envoys.[121] The King rejected the Imam's allegations, asserting that it was the Yemeni envoys that were uncooperative.[122] The King expressed his anger at Yemeni procrastination in the settlement of the Najran issue and the boundary disputes:[123]

> 'Brother, the repetition of these issues becomes repulsive. Talks have not led to results. Regarding the issue of the mountains, these mountains are part of our country, under our care. You have treated us in a way that a Muslim does not treat his Muslim brother. But we have kept our mouths shut due to a desire for peace and convenience. Despite that, you have never done what you promised ...
>
> Regarding the issue of Najran, we have expressed that we want nothing except equity. We have suggested that Najran be a neutral territory between us. We had agreed, after discussion of the Idrisis and the boundaries, that you send a delegation for further discussions on Najran. The delegation has arrived. But it has not achieved anything. Instead, it held discussions on hopes, history and grandfathers, bearing senseless results. ...if the goal behind these interpretations was to disdain or disesteem your brothers or the desire for continuity of policy that has been practised in the mountains, we would say nothing except Allah (God) is the only hope for us...
>
> ... I urge you to do two things: 1) withdraw your troops from the mountains and abstain from intrusion there and also take the Idrisi away as soon as possible. I shall vow to you that I shall excuse, as I previously did, the people of the mountains who caused disorder ... 2) command your delegation to settle the issue of Najran either by: treating it as neutral or suggesting a solution, respecting the interests of all sides and considering equity between the two parties. Peace and war depend on your decision...'

The Imam, in his reply, continued arguing with the King on the question of title to Najran, again rejecting the suggestion of treating this territory as neutral.[124] By this stage, the King was loosing his patience. He gave a final warning that if the Imam did not change his policy of occupying Najran and the mountains and accept an equitable solution in Najran, then he

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[120] Ibid., p. 143.
[121] Document 128, ibid., p.150.
[122] Document 129, ibid., pp.150-151.
[123] Document 131, ibid., pp.152-153.
[124] Document 132. ibid., p. 153.

had no choice except to resort to force.[125] The Imam replied on the same day, insisting that he was not being unreasonable by insisting on his claims to Najran.[126]

Telegrams exchanged between the two leaders thus reveal an intense dispute as well as differing perceptions concerning its nature. In all of his telegrams to the Imam, the King kept asking him to recall the 1346 AH (1928 AD) agreement regarding the boundary allocation which put Najran inside Saudi Arabia. The Imam, on the other hand, continuously alleged he had title to Najran which the King had waived. Telegrams between the two heads of state leave no room for doubt that there was a 'dispute' as this word is defined in international law[127], as well as behaviour that also showed conflicting claims and arguments. The question then is whether the dispute was a title dispute or a boundary dispute?

It is reasonably clear from these official documents that the nature of the pre-Treaty of Taif dispute was a title dispute. Although Saudi Arabia insisted that the boundaries had been fixed, Yemen continued to claim title over Najran, `Asir and Jizan throughout the negotiations.

The question must then be asked whether it was a political or a legal title dispute. Yemen claimed title to `Asir, Jizan and Najran because the Idrisi State had 'stolen' those territories from Yemen and they should therefore be given back. Yemen's claims, however, tended to be of a political nature since Yemen claimed Najran and Yam due to genealogical and social ties between Yemeni tribes and the Yam. In addition, Imam Yahya was imbued with the idea of "the Greater Yemen". To achieve that goal, Imam Yahya wanted to extend his arena to include the southern Yemen Protectorates and the Rub' Al-Khali Desert. He tried to support that aim through historical arguments. As indicated at the beginning of this chapter, Sharma and other territorial sovereignty experts considered a territorial dispute as a political dispute if it has non-legal bases such as security, historical, social, economic and geographical reasons.[128] It is therefore suggested that Yemen's claims were at this stage primarily political, except for the very limited time when its troops occupied Najran, when Yemen could have asserted legal claims based on annexation and effective occupation.

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[125] Document 135, ibid., pp.156-157.
[126] Document 137, ibid., pp. 157-158.
[127] See above.
[128] See above.

Saudi Arabia, by contrast, claimed title to those three provinces on the basis that they had belonged to the First Saudi State and also because the people of Najran were in alliance with the Second Saudi State. The Saudi claim was said to be supported by exchanged letters and telegraphs between the leader of the Yam and Imam Faisal bin Turki, the head of the Second Saudi State, as well as the Saudi-Idrisi Treaty. According to that instrument, Sayed Mohammed Al-Idrisi recognised King Abdul-Aziz, as sovereign in Najran. In addition, it was argued that Imam Yahya recognised Najran and Yam as Saudi territory when he replied to King Abdul Aziz's telegram to inform the King that he accepted the Al-'Aro Award. Thus it can be argued that, from this perspective, the dispute was of a legal nature due to the legal basis from which the Saudi claims stemmed.

(c) The post-Treaty of Taif dispute

(i) The 1934 Treaty of Taif

Due to the failure in the negotiations between the two parties to reach a final settlement over the territorial sovereignty dispute, the Saudi-Yemeni war erupted in 1934. It lasted only a few weeks.[129] As a result of the Saudi victory, the Imam dropped his title claims to the disputed territories of `Asir, Jizan and Najran under the terms of the 1934 Treaty of Taif.[130] In turn, Saudi Arabia dropped their claims to territories in northern Yemen. Article 2 of the Treaty reveals this mutual waiver of title claims, providing:

> Each of them gives up any right he claimed over any part or parts of the country of the other party beyond the frontiers fixed and defined in the text of this treaty. His Majesty the Imam King Abdul Aziz abandons by this treaty any right of protection or occupation, or any other right, which he claimed in the country which, according to this treaty, belongs to the Yemen and which was (formerly) in the possession of the Idrisis and others. His Majesty the Imam Yahya similarly abandons by this treaty any right he claimed in the name of Yemeni unity or otherwise, in the country (formerly) in the possession of the Idrisis or the Al-Aidh, or in Najran, or in the Yam country, which according to this treaty belongs to the Saudi Arabian Kingdom.

Moreover, the Treaty of Taif delimited the boundary line between the two kingdoms. The boundary line was described in Article 4, but unfortunately the two countries did not attach any map which depicted the boundary.[131] Article 4 simply provides a description of the boundary line.[132]

Considering the discussions between Saudi Arabia and northern Yemen leading to the signature of the Treaty of Taif and the three official reports of 1935 by the two Saudi-

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[129] See chapter 1.
[130] See Appendix 1.12.
[131] See the section on maps in chapter 4.
[132] For the full text of Article 4 of the Treaty of Taif, see Appendix 1.12.

Yemeni demarcation committees given the task of demarcating the Saudi-Yemeni boundary according to this treaty, it is suggested that the Treaty of Taif in fact created two boundary areas with two different kinds of boundary development procedures.

Firstly, a "mature" boundary area was established which fulfilled the three stages of boundary development: allocation, delimitation and demarcation.[133] That area existed between a demarcated boundary marker called Ras-Al-Mouwaj[134] and the Jabal-Al-Thar.[135] Thus, Article 4 begins by describing the direction of the boundary line or 'frontier line' in relatively detailed language:[136]

> The frontier line between the two Kingdoms begins at a point half way between Midi [Medi] and Al Musim [Al-Muwassam] on the coast of the Red Sea, and [runs] up to the mountains of the Tihama in an easterly direction...etc...

This language was sufficient to delimit the boundary line, as it mentions distances, specific locations, whether cities, villages, mountains, valleys or tribal lands (dirah), where the boundary starts and passes, as well as the direction of the line.[137]

The Saudi-Yemeni Demarcation Boundary Committee was given the task of demarcating the eastern side of the delimited section of the boundary set out in the Treaty of Taif, while a second committee called the 'Tihama Committee' was given the same task of demarcating the boundary from the Red Sea onwards. The Report of Demarcation Boundary Committee said:[138]

> 'After investigations and with the approval of the chiefs of tribes and without any coercion the border demarcation process was carried out. The borders were determined, defined and distinguished by the famous and unchangeable names of mountains, hills, and valleys. These names will be mentioned in detail later on. Those names have been mentioned in minutes written at different dates and approved by both committees. Each committee (has) kept a copy of the minutes. The two Committees appointed trusted men who went to put

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[133] Al-Ghamdi, 'The Saudi-Yemeni Boundary: Towards a Peaceful Resolution' (1996), *University of Durham, Ph.D*, p. 67, citing Drysdale and Blake who define allocation as representing 'the initial understanding between states as to their territorial claims. Lines may be crudely drawn on maps, but no accurate field survey has been attempted', from Drysdale and Blake, *The Middle East and North Africa* (1985). They cite Jones, who says that '...boundaries may pass three stages in their development; allocation, delimitation, and demarcation...some political geographers have proposed the addition of a forth stage called administration.'

[134] This marker was located on the Red Sea coast situated at a middle distance between the village of Al-Muwassam in Saudi Arabia and the village of Midi in Yemen; See map at Appendix 2.13.

[135] See Appendix 2.12.

[136] Treaty of Taif, Article 4.

[137] Al-Ghamdi, 'The Saudi-Yemeni Boundary: Towards a Peaceful Resolution', p. 68.

[138] 1934 Treaty of Taif, Annex 2, reproduced in ibid.,, pp. 249-275. The 'mountains' demarcation committee created 90 boundary points, starting from Jabal-Al-Thar mountain marker to the last marker planted in an area called 'Jour-Al-wadafa'. Annex 3 included a corrigendum in order to correct a mistake made by the two committees relating to the boundary pillar at Agabat Nahouga; see Al-Ghamdi, 'The Saudi-Yemeni Boundary: Towards a Peaceful Resolution', p. 276.

> stone marks along the border line every other kilometre pending the erection of posts at a time to be specified by their Majesties the two Kings. They also will appoint the persons who would carry out the work and the expenses involved.
>
> Each tribe has been given a statement approved by the two Committees defining its borders with the adjacent tribe to prevent any excuse or confusion, so that every one should know his limits and adhere thereto and refrain from crossing and offending adjacent lands for the feeding of animals or otherwise.'

The kind of precise language capable of delimiting the boundary line continued until the Article 4 description of the 'frontier line' reached an area populated by Hamdan-bin-Zaid and Yam. At this point the relatively precise language describing the 'frontier line' changed into vague or less precise language when it said:

> 'This line then extends from the end of the above-mentioned limits between the edges of the Saudi Arabian tribes and of those of the Hamdan-bin-Zaid, and all the Yemeni tribes who are outside Yam. All the borders and the Yemeni territories up to the end of the Yemeni frontier in all directions belong to the Yemeni Kingdom; and all the borders and territories up to the end of their boundaries, in all directions, belong to the Saudi Arabian Kingdom.'

At this stage, the language is no longer precise enough to delimit the boundary; it is only sufficient to allocate the boundary line, the first stage of boundary development[139]. The second section of the boundary, which is merely allocated and not delimited, was located to the east of the Jabal-Al-Thar marker and it extended to the Radhm-Al-Amir area.[140] Regarding the allocation of this area, Al-Ghamdi found that neither were lines drawn on maps nor was a survey conducted.[141]

According to the mutual recognition by the two states in Articles 2 and 4 of the Treaty of Taif, Yam and Najran belonged to Saudi Arabia while Wa`elah and its land located to the south of Najran belonged to northern Yemen. Despite the vagueness of the description of this boundary, it is submitted that there was a sufficient description of the line to allocate this boundary.[142]

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[139] See above.
[140] See Appendix 2.10.
[141] Al-Ghamdi, p. 67.
[142] It is noted that this area, shown on the Yemeni map in Appendix 2.11 as oil field no. 18, was the subject of intense disputes between the two countries during the 1990s, at the time of negotiations leading to the Treaty of Jeddah; the dispute was motivated by oil concessions granted by the Yemeni Government to a number of foreign companies which were challenged and protested by the Saudi Government. This issue is more relevant to the delimitation of the boundary and it will not be considered further in this thesis. See the section on motives for the disputes in chapter 1.

In sum, it is suggested that Article 4 of the Treaty of Taif actually provided two separate boundary developments: a delimited boundary which was later demarcated and an allocated boundary indicated by the above-mentioned Article 4 in less precise language.

(ii) The post-Treaty of Taif dispute

It could be expected that the settlement set out in the 1934 Treaty of Taif would have finally resolved the title dispute that had fluctuated between Saudi Arabia and northern Yemen up until the outbreak of war. Even though only half the boundary was delimited by the Treaty of Taif, the other half of the boundary was at least allocated which indicates that the title question had been settled.

Although the Treaty of Taif provided a solution to the former dispute regarding title to `Asir, Jizan and Najran and partially delimited the boundary between the two countries, this solution did not prove to be sustainable. From 1973 to the 1995 Memorandum of Understanding, it appeared that there were again contradictory claims by the two sides over both delimitation and also title to the three disputed territories.

From the point of view of Saudi Arabia, the Treaty of Taif finally settled the dispute over title to `Asir, Jizan and Najran. Nevertheless, the two countries continued to dispute the delimitation of the boundary, because the Treaty of Taif did not delimit the section of the boundary from the Jabal-Al-Thar boundary pillar. There was also a demarcation dispute between the two countries given the disappearance of the vast majority of demarcated boundary pillars.[143]

At the same time, Yemen was also disputing the very validity of the Treaty of Taif, again raising claims to title to the disputed territories. The Saudi victory in the war was considered by Yemen as coercion and northern Yemen called those territories ceded to Saudi Arabia in the 1934 Treaty of Taif the "lost provinces".[144] Yemen thought that it would be possible to

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[143] Al-Enazy, A. H., 'The International Boundary Treaty "Treaty of Jeddah" concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000', *96 AJIL* (2002), p.163; El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997),* p. 139. The 1995 MOU set up a Joint Committee to re-establish the border signs in accordance with the border reports appended to the Treaty; see Appendix 1.13, Article 2. However, there was strong disagreement in the committee over the location of two important boundary pillars.

[144] El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997)* p. 140 ; Schofield, 'The International Boundary between Yemen and Saudi Arabia', pp. 21 and 30; Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000', pp. 161-162.

challenge the validity of the Treaty of Taif and thus, reinstate its claims to title over to `Asir, Jizan and Najran, based on a number of different claims.

Firstly, Yemen argued that, by operation of Article 22, the Treaty of Taif had terminated.[145] Although Article 4 of the Treaty of Taif established a boundary line between Saudi Arabia and Yemen, Article 22 caused confusion over the validity of that boundary line and title to `Asir, Jizan and Najran because it said that the Treaty was to last for a renewable twenty lunar year period.[146] If one state was not interested in such a renewal, the Treaty would not be extended and the possibility of renewing claims to title to the three disputed territories, as well as other lands, could again arise. The strength of any legal claim on the basis of Article 22 of the Treaty of Taif will be assessed in chapter 3. Suffice to say that this was one argument put forward by Yemen to undermine the validity of the Treaty of Taif and thereby to reinstate its claims to title over the territories, suggesting that a title dispute had, once again, arisen, despite the attempt to settle the boundary in the Treaty of Taif.

Secondly, Yemen argued that the Treaty of Taif was invalidated by the coercion of Saudi Arabia and therefore could not govern the boundary issue.[147] Again, these claims will be assessed in chapters 3 and 4, but they are further evidence that a dispute still existed at that time between Saudi Arabia and Yemen over title to `Asir, Jizan, and Najran.

In 1995, Saudi Arabia and Yemen concluded a Memorandum of Understanding.[148] This said, *inter alia*, that the Treaty of Taif would provide the basis for the ongoing negotiations on the resolution of the disputes which were relevant to the boundary demarcation between the two countries.[149] It appears that nonetheless, in spite of the 1995 MOU, Yemen continued to raise title claims over the disputed territories and to challenge the validity of the Treaty of Taif until the final settlement reached according to the Treaty of Jeddah in June 2000. For example, El-Rayyes reveals that during the negotiations of the Treaty of Jeddah in the 1990s, Yemeni officials expressed the view that the Treaty of Taif was cancelled or terminated in

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[145] El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997)* p. 139; Schofield, 'The International Boundary between Yemen and Saudi Arabia', pp. 20, 28, and 30; Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000', p. 161.

[146] See Appendix 1.12 for the text of Article 22.

[147] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents (in Arabic)*, p. 251; El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997)*, p. 140.

[148] See full text of the MOU at Appendix 1.13.

[149] Article 2 of the MOU.

September 1992 and they did not want to renew it.[150] In 1997, he quoted the President of Yemen, Mr Ali Abdullah Salih, as saying that he would not accept a settlement which would deprive Yemen of more territories in addition to those territories that Saudi Arabia acquired by invasion, in reference to the Treaty of Taif and the preceding war.[151]

The Yemeni President made almost the same claim when he was interviewed by Abu Dhabi TV on the 24th March 2000, about three months before the final conclusion of the Treaty of Jeddah.[152] He threatened to reject the Treaty of Taif if Saudi Arabia did not accept the two positions of the Ras-Al-Mouaj and Jabar-Al-Thar markers put forward by the Yemeni delegates to the Joint Saudi-Yemeni Boundary Marker Commission. These comments illustrate that there was still a title dispute over `Asir, Jizan and Najran.[153]

In summary, it is safe to conclude that there was indeed a dispute over title to `Asir, Jizan and Najran until the conclusion of the Treaty of Jeddah in June 2000. That is not to say that there was not also a boundary dispute, as noted above, but this will not be discussed further in this thesis. Had the two countries failed to reach an amicable solution and the dispute had been submitted to international arbitration, as was demanded by the Yemeni President in 2000,[154] it is suggested that the arbitrators could have been asked to decide on the title claims of Yemen, as well as the demarcation and delimitation claims by Saudi Arabia. It is the legal claims to title that will be assessed in chapters 3 and 4 of this thesis.

5. The territorial sovereignty dispute over the Rub' Al-Khali Desert

(a) Introduction

The following section will explore whether the territorial sovereignty disputes over the Rub' Al-Khali Desert fall into the category of boundary or territorial disputes, or both. To conduct

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[150] El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997)*, p. 139-140.
[151] Ibid.
[152] Only Arabic text of the interview is provided by the official website of National Information Centre, Republic of Yemen at:
http://www.nic.gov.ye/SITE%20CONTAINTS/presedency/itrvews/first/index.htm (last visited on 8th August 2000).
[153] In addition, Al-Wajih, a Yemeni international lawyer, emphasised the Yemen official claim, arguing that Yemen deserved title to `Asir, Jizan and Najran according to international law; Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents (in Arabic)*, p. 252. In addition, A Yemeni cartographer, Al-Dhamari, produced a map in the 1990s that supports the view that Yemen includes `Asir, Jizan and Najran; See Appendix 2.4; this map also includes the Rub' Al-Khali Desert within Yemen.
[154] As was provided for in Article 8 and Arbitration Covenant attached to the 1934 Treaty of Taif in Annex I and Article 3 of the 1995 Memorandum of Understanding.

this examination, various official documents and relevant literature will be consulted. These sources can be divided into two parts: firstly, those documents relating to the period before the independence of southern Yemen from British colonial rule in 1967 and secondly documents concerning the period between 1967 and the conclusion of the Treaty of Jeddah in June 2000.

Territorial sovereignty over this area was first tackled by the 1914 Anglo-Turkish Convention and continued to be the subject of diplomatic exchanges between Saudi Arabia and Britain, succeeded by southern Yemen and then the Republic Yemen after unification.

It is noted that Saudi Arabia and Yemen never published any official volume or "White Book" setting out their claims. Most of the documents consulted come from the British archives, revealing the conflicting British and Saudi stances during the negotiations held before the independence of southern Yemen. In addition, some British documents consulted provided information about conflicting claims between Saudi Arabia and southern Yemen during the Wadiha war in 1969. These have, in turn, been supplemented by other documents where available.

(b) The dispute before the independence of southern Yemen

According to the 1914 Anglo-Turkish Convention, a boundary line, called the Violet line, was drawn on a map that was annexed to the Convention, delimiting the boundary between the Ottoman territory of Najd and the southern Yemeni territory under British control.[155] As Schofield says:[156]

> 'During March 1914 the so-called Violet-again after its colour on the map, annexed to the agreement-was defined to link the southern terminus of the Blue line with the [Anglo-Turkish] boundary in south-west Arabia, delimited during 1903-1905 to separate the Ottoman wilayat (regions) of Yemen from the nine cantons of the loosely-federated Aden protectorate. The Violet line ran at an angle of 45 degrees from Wadi Bana in the south-west in a straight line until it met the Blue line.'

The dispute over the Rub' Al-Khali Desert arose in 1934 when Saudi Arabia, represented by King Abdul Aziz, expressed its desire to the British government, represented by Sir Andrew Ryan, British Ambassador to Saudi Arabia, to delimit its territory with neighbouring countries then under British influence. The British Government's reply was that the

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[155] See Appendix 2.9. Although the Violet line was an extension of the "Blue Line" created by the 1913 Anglo-Turkish Convention, it is the former which is of interest in this dispute discussed in this section.

[156] Al-Ghamdi, *The Saudi-Yemeni Boundary: Towards a Peaceful Resolution,* p.22.

boundary had already been delimited according to the 1914 Anglo-Turkish Convention. The official British report by Sir Andrew Ryan explains the British response as follows: [157]

> 'I explained how convinced His Majesty's Government were that the only legal basis was that resulting from the Anglo-Turkish Conventions of 1913-14. The King, I said, now ruled what had been a part of the Ottoman Empire and had succeeded to the position of the former Turkish Government. If this thesis, to which His Majesty's Government held strongly, was admitted, they would be prepared to consider modifications of the legal frontier. I must, however, make it clear that what they had in view was minor modifications, a qualification rendered necessary by the comprehensiveness of the claims put forward in the last Saudi note in regard to Qatar and the country towards Muscat and Oman.'

Following the Saudi challenge to the delimitation in the 1914 Convention, a number of different proposals were put forward by both Saudi Arabia and Britain on the delimitation of a boundary in the Rub' Al-Khali desert.[158]

The most extreme Saudi boundary line was proposed in a letter dated the 3rd April 1935, which was sent from the Saudi Under-Secretary of the Foreign Ministry, Mr. Fuad Hamzah, to Sir Andrew Ryan.[159] The so-called "Fuad line" was described as follows:[160]

> 'The said line extends from the limits of the land of Kaffat al-Liwa to the point of intersection of longitude 56E and latitude 22N; it then runs along the 56th meridian to the point of its intersection with latitude 19N. It then runs in a straight line to the point of intersection of latitude 17N and longitude 52E. Thence it runs west a straight line along the 17th parallel to its intersection with longitude 46E. From this point it runs the same direction until it intersects the line known as the Violet line.'

The Fuad line was based on the limits of tribes who paid zakah to the Saudis.[161]

However, Sir Andrew Ryan sent a letter, on the 25th November 1935, to the Saudis suggesting a different line, sometimes referred to as "Ryan's line" or the "Riyadh line":[162]

> '5. A straight line from key-point J [the intersection of meridian 55E and parallel 22.30N] to the intersection of the same meridian, 55E, with parallel 20N (key-point G).
>
> 6. A line from key-point G to the intersection of meridian 52E with parallel 19N (key-point H), drawn approximately straight, but so as to leave Sabkhat Mijora to Saudi Arabia and the Ramlat Mughsin to Musqat and Oman.
>
> 7. A straight line from key-point H to the intersection of parallel 18N with the line known as the "Violet line".'

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[157] India Office (IOR) document R/15/1/603, p. 3.
[158] See Appendix 2.2, map showing the "Fuad Line" and the "Riyadh Line".
[159] Al-Ghamdi, *The Saudi-Yemeni Boundary: Towards a Peaceful Resolution,* p.85.
[160] Ibid., p.85.
[161] Ibid.
[162] Ibid., pp.86-87

The difference between these two lines was considerable. Although the Riyadh line constituted the most generous offer made by the British to the Saudis, it was not accepted. Therefore the British reconsidered alternatives. They discussed 'the Aden Government Concession Line 1937', formulated on a geographical basis as proposed in a letter dated the 4th March 1937, sent from Mr. W. Ormsby-Gore of the Colonial Office to the British Resident in Aden: [163]

> '... it is desirable that every endeavour should be made to reach agreement as quickly as possible on the question of these disputed frontiers...it has been suggested that the position of the frontier negotiations should be reviewed, and that consideration should be given to the question whether some further concession cannot be made towards meeting King Ibn Saud's claims both in the more northern area and in the Aden Protectorate Zone. So far as the Protectorate is concerned, I shall be obliged if you will consider whether, in the light of this dispatch, some additional concession might not be made in the area between parallels 17 and 18, particularly to the west of meridian 51.'

This line was going to run as the said letter indicated:[164]

> '...a 20 mile [wild] strip would be conceded to the Saudi Government running parallel to and south of the Riyadh line for 300 miles between meridian 48 and meridian 52.'

However, that huge concession area (6000 square miles of desert), as Al-Ghamdi noted, was not offered to the Saudis by the British.[165] The British also discussed another line called the 'Umm Al-Samim-Rayyan line' in 1949 but it again was not offered.[166]

In a letter from the the the British Embassy, in Jeddah, to the Saudi Foreign Ministry, in 1955 the British proposed the so-called 'British Declaration line of 4 August 1955'.[167] The proposed line is described as follows:[168]

> 'b) From Umm-al-Zamul southwards and south-westwards the boundary of Muscat and Oman is a line joining the following points: Umm-al-Zamaul to 22N, 55.40E, and 20N. 55E, to 19N52E. At this point the line meets the boundary of the Eastern Aden Protectorate which runs from there along the southern fringe of the sand dunes on the general lines of the following co-ordinates: 18.48N 51.03E, 18.10N 48.20E. Thence it runs due south west to the boundary of Yemen.'

While Ryan's (Riyadh) line of 1935 and the 1955 British line coincided at the eastern co-ordinate of 19N 52E, they differed as to the direction of the line. The 1955 British line runs through 18.48N 51.03 E to 18.10N 48.20E while the 1935 line runs in a straight line to the

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[163] Ibid. p. 88, cited from Schofield (ed.), *Arabian Boundary Dispute, Saudi Arabia-Yemen, 1913-1922, Vol 20,* pp. 151-2.
[164] Ibid., p. 88., cited from Schofield (ed.), *Arabian Geopolitics Regional Documentary Studies: South-West Arabia: Boundaries, Territorial Claims and Disputes* (1993) *vol. 2*, p. 156.
[165] Ibid., p.89.
[166] Ibid.
[167] See Appendix 2.17.
[168] Al-Ghamdi, 'The Saudi-Yemeni Boundary: Towards a Peaceful Resolution', p. 90, cited from Schofield (ed.) *Arabian Boundary Dispute, Saudi Arabia-Yemen, 1913-1922, Vol 20,*, pp. 206-207.

intersection of latitude 18N with the Violet line.[169] The line was rejected by the Saudis in the 1955 Buraimi Oasis dispute with the British, who were acting on behalf of the Sultan of Oman and Sheikh of Abu-Dhabi.[170]

The Saudis in turn suggested the 'Saudi Declaration line of 1955'.[171] A letter, dated the 18th October 1955, sent from the Saudi Foreign Ministry to the British Embassy proposed the boundary line as follows:[172]

> '4. With regard to the region which lies south of latitude 19 North, His Majesty's Government and the territories of the rulers for whom the British Government are entitled to set should start at the point 19 North 56 East; the frontier should then run to the point 17 North 52 East and thence westwards along latitude 17 North until it reaches longitude 48 East; thence it should run through the point at 16 North 46 East to the Yemen border.'

The question arises whether the dispute over the `Rub Al-Khali Desert was a title dispute or a boundary dispute. Given that the boundary was purportedly delimited by the 1914 Convention, it could be expected that the dispute should be classified as a boundary dispute. This conclusion seems to be further supported by the fact that Britain and Saudi Arabia made several proposals, considered above, on the locations of the boundary. Usually states only propose a boundary line if they are involved in a boundary dispute.

Yet there is also evidence that the dispute was actually of a title character. Firstly, it should be noted that Saudi Arabia challenged the validity of the 1914 Convention as settling the boundary in this area, suggesting that a territorial dispute existed.[173] Furthermore, even if it is accepted that the dispute concerned a number of competing and conflicting boundary lines, the size of the area between these lines was large enough to be compared to territories of many states in the world. The area of this dispute was larger than the 'Auzo Strip' disputed in the *Libya/Chad case*. On this basis, according to the argument by Boggs discussed above, it is possible to classify this dispute as a title dispute.

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[169] Ibid., pp. 90-91.
[170] Ibid., p. 91.
[171] See Appendix 2.17.
[172] Al-Ghamdi, 'The Saudi-Yemeni Boundary: Towards a Peaceful Resolution', p. 91, cited from Schofield (ed.) *Arabian Boundary Dispute, Saudi Arabia-Yemen, 1913-1922,* p. 349.
[173] Imam Yahya also challenged the validity of the 1914 Convention, as reported by Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents (in Arabic)*, pp. 33-36 and 46-47. These arguments will be analysed in chapter 3.

(c) The dispute following the independence of southern Yemen

This section considers the nature of the dispute in the period following the independence of southern Yemen in 1967, through to unification of northern and southern Yemen in 1990, up until the the conclusion of the Treaty of Jeddah in 2000.

After its independence in 1967, southern Yemen inherited the dispute in this area from Britain. However, it did not follow the British stance. To illustrate, southern Yemen's troops invaded the village of Al Wadiah in 1969, although this territory was clearly located to the north of the Violet line, as well as the 1955 unilateral British line. At that stage, Saudi forces confronted the southern Yemen army, managing to regain control over the disputed territory, which they have kept until the present day.[174] In addition to Al Wadiah, other tribal lands and cities that according to the British position were located within Saudi territory, were nevertheless claimed by southern Yemen and later by Yemeni officials. For example, Sharurah[175] was also claimed by Yemen although it was located to the north of the 1955 British line, but it falls within the line that Schofield predicted that Yemen would claim in the summer of 1996,[176] more than one year after the 1995 Memorandum of Understanding. Despite these extreme claims to territory, Schofield also reported that it was one of Yemen's strategies to, on occasion, argue their case based on the 1914 Violet line.[177] In turn, Saudi Arabia continued to claim its 1955 line which was a slight modification to the 1935 Fuad Hamza line.

As Saudi Arabia and Yemen were involved in claiming different lines in the course of the efforts to delimit the boundaries, it could be suggested that the dispute was a boundary issue. However, as with the dispute between Saudi Arabia and Britain, the size of the territory between the two conflicting lines qualifies it as a title dispute; in fact, if one accepts Schofield's analysis of the Yemeni claims, the size of the territory between the two conflicting lines has more than doubled.[178]

It is worth mentioning that in 1997, in light of the 1995 Memorandum of Understanding, Saudi Arabia, represented by Prince Sultan bin Abdul Aziz, and President Ali Abdullah Saleh of Yemen reached a secret agreement regarding the delimitation of the common

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[174] It is noted that the delimitation of this area by the Treaty of Jeddah placed Al Wadiah within Saudi territory. See Appendices 2.12 and 2.18.
[175] See Appendix 2.10.
[176] See Appendix 2.16.
[177] Schofield, 'The International Boundary between Yemen and Saudi Arabia', p. 24.
[178] See Appendix 2.16.

boundary in the Rub' Al-Khali Desert.[179] The agreed line was known as the Como line after the location of the negotiations on the shores of Lake Como in Italy. This agreement was announced at a press conference in July 1998 held by Prince Naif, Saudi Interior Minister. He said:[180]

> '... The south-eastern borders between Saudi Arabia and Yemen have already been completed and agreed upon; this is known as the Como Agreement and was concluded between President Saleh and Prince Sultan.'

However, despite this encouraging news, the finality of this agreement was put into doubt by further statements made by Saudi Arabia and Yemen. A few weeks after the press conference, Saudi Arabia protested the Oman-Yemeni land boundary delimitation of October 1992 because it was considered to be against Saudi interests and it was concluded without any consultation.[181] On the 20th March 2000, President Saleh also indicated that the Como agreement was conditional on reaching a final solution on the location of two missing boundary pillars at Ras Al-Mouaj and Ras Al-Thar.[182]

Given these facts, it is safe to conclude that the Saudi-Yemeni dispute over the Rub' Al-Khali Desert could be classified under both categories of territorial sovereignty dispute. Although it undeniably bore characteristics of a boundary dispute, the application of Boggs' definition of a title dispute and a comparison with international disputes such as that between Libya and Chad in the Auzo Strip, qualify it to be examined from a title dispute dimension as well.

6. Conclusion

Since the goal of the thesis is to examine claims in the former Saudi-Yemeni territorial sovereignty dispute over `Asir, Jizan, Najran and the Rub' Al-Khali Desert, it was important first to verify whether the Saudi-Yemeni conflict was a dispute under international law and if so, what type of dispute it was. Classifying the nature of the claims in question helps to determine which international rules and theories are applicable to the dispute and therefore it will be possible to analyse the arguments of Saudi Arabia and Yemen to decide which state had better legal claims.

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[179] See Schofield, 'The International Boundary between Yemen and Saudi Arabia', p. 40.
[180] "Prince Nayef Holds Press Conference on Yemeni Situation", Saudi Press Agency, 21 July 1998, cited by ibid., p. 40.
[181] Ibid., p. 40.
[182] Only Arabic text of the interview is provided by the official website of National Information Centre, Republic of Yemen at:
http://www.nic.gov.ye/SITE%20CONTAINTS/presedency/itrvews/first/index.htm (last visited on 8th August 2000).

By applying the concepts of boundary disputes and title disputes to the claims and arguments involved in the Saudi-Yemeni dispute, it appears that the two countries held opposing opinions about the nature of the dispute. Up until the settlement of the dispute, there was a title aspect to the disputes and both parties put forward various legal claims relating to the validity of treaties and title acquisition modes. The following chapters will develop the analysis of the title dispute, looking in more detail at the legal claims of the two states.

Therefore, the thesis proceeds to analyse the claims in two phases. Chapter 3 covers arguments relevant to the two interntional treaties involved in the dispute: the 1934 Treaty of Taif and the 1914 Anglo-Turkish Convention. Chapter 4 then covers claims and arguments based on the legal modes of title acquisition and loss.

Chapter 3

Claims concerning applicable international treaties: the 1914 Anglo-Turkish Convention and the 1934 Treaty of Taif

1. Introduction

It was concluded in chapter 2 that the former Saudi-Yemeni claims to the disputed territories could be divided into two categories: claims relevant to international treaties dealing with title and/or boundary issues and claims based on title acquisition/loss modes as well as other means peripheral to the proof of title, such as the use of maps. This chapter endeavours to analyse those claims and arguments based on international treaties which can be identified in the accessible official records or which have been suggested by writers discussing the dispute. The purpose of the analysis is to determine which country would have had the preponderance of evidence in its favour if the dispute had been submitted to an ad-hoc arbitration tribunal.

There were two international treaties relevant to title/boundary to the disputed territories which were raised (officially or through the investigations or analysis of interested writers) by Saudi Arabia and Yemen, as well as by Britain during its protection over southern Yemen. These treaties were the 1914 Anglo-Turkish Convention[1] and the 1934 Treaty of Taif.[2]

The first of these treaties, the 1914 Convention, was concluded by the two predecessor states, the Ottoman Empire and Britain, creating a boundary line between Najd and the Hadhramout territory, or East Aden Protectorate (EAP) located in then southern Yemen. The Violet line created by the 1914 Convention cut through the Rub' Al-Khali Desert frontier, giving most of the title to the desert to southern Yemen.[3]

The Treaty of Taif was concluded by Saudi Arabia and northern Yemen directly. It recorded Yemen's renunciation of its title claims to `Asir, Jizan and Najran provinces in favour of

[1] Full text of the Convention is available in Appendix 1.2.
[2] Full text of the Treaty is available in Appendix 1.12.
[3] See Appendix 2.2

Saudi Arabia. A boundary line was also created and partially demarcated, albeit poorly, and it was not drawn on a map.[4]

The following sections will consider claims related to each of these treaties in turn. In chapter 5, the conclusions of this chapter shall be compared to the terms of the settlement of these claims in the 2000 Treaty of Jeddah.

2. The 1914 Anglo-Turkish Convention

(a) Background

The 1914 Anglo-Turkish Convention was signed at London on the 9th March 1914 and ratifications were exchanged again in London on the 3rd June 1914 and entered into force on the same date.[5] The 1914 Convention was concluded to complement a previous treaty, the 1913 Anglo-Turkish Convention. Only the 1914 Anglo-Turkish Convention is examined in this thesis because it is the one applicable to the Saudi-Yemeni boundary in the Rub' Al-Khali Desert; the 1913 Anglo-Turkish Convention delimited a 'Blue' line located to the east of Saudi Arabia, far from the Saudi-Yemeni frontier.

(b) Attitudes towards the 1914 Convention

British archives reveal that the Saudi-British disputes over the 1913-14 Anglo-Ottoman Conventions go back to the year 1934.[6] That was the year when Sir Andrew Ryan, then British representative in Saudi Arabia, met King Abdul Aziz. During the meeting, the king wished to discuss various points including his state's boundaries with its neighbours (including southern Yemen) then under British protection. Ryan's report suggested:[7]

> 'The King also wished to take this opportunity of explaining his views on ... the question of his frontiers...
>
> I therefore said that one of the outstanding questions which His Majesty's Government desired to see settled was that of his eastern boundaries. I explained how convinced His Majesty's Government were that the only legal basis was that resulting from the Anglo-Turkish Conventions of 1913-14.'

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[4] This thesis does not deal with the boundary-related dispute; it deals only with title claims to the disputed territories.

[5] See *Index of British Treaties (1101-1968), vol. 2*, p. 578.

[6] For causes of the Saudi-Yemeni and Saudi-British territorial sovereignty disputes, see chapter 1.

[7] See India Office Library and Records (IOR) confidential document no. [E 5063/2429/25], R/15/1/603, dated 3rd August 1934, entitled '*Record of Conversations during Sir A. Ryan Visit toTaif. July 12th-14th, 1934*', p. 1 and 4.

Saudi Arabia as represented by its leader, King Abdul Aziz, rejected reliance on the 1913-14 Anglo-Turkish Conventions, claiming that they were unaware of these two treaties and challenging the Ottoman's authority to delimit the boundary: [8]

> 'Towards the end the King expressed his surprise on learning that the Turks had agreed to alienate rights, which were not in their lawful disposal. He denied all knowledge until recently of the Anglo-Turkish Conventions.'

The representative of the British Government contested this:[9]

> 'I said that surely the Saudi Government had been aware of the Anglo-Turkish Convention of 1913, which, if I remembered rightly, was referred to specifically in the Koweit-[Kuwait] Nejd [Saudi Arabia] Boundary Convention of 1922.'

The two states maintained their contradicting views on the 1913-14 Conventions. Thus, Britain believed that Saudi Arabia, as successor to the Ottomans, was under an obligation to respect the boundary set out in the conventions, including the Violet line between Saudi Arabia and southern Yemen, while Saudi Arabia totally rejected adherence to the treaties. This was noted in the *Buraimi Arbitration* of 1955 when the two states submitted a dispute to an arbitral tribunal for settlement of a title question to a group of oases, called Buraimi, located to the east of the Rub' Al-Khali Desert where the Saudi eastern frontier met with the British protectorate of Abu Dhabi and the Sultanate of Muscat and Oman, then also under British protection. In their memorandum in the *Buraimi Arbitration*, Britain repeated its claims that Saudi Arabia was a successor to the Ottoman Empire:[10]

> '34. The Government of the United Kingdom contends that, even if the historical evidence could be regarded as providing a basis for Saudi pretensions to historical rights to any parts of either of the areas in dispute in 1913, the Anglo-Turkish Conventions of 1913-14 absolutely preclude the Saudi Government, in these proceedings, from basing a claim to any territory east of the blue line upon any events or titles prior to those Conventions.'

Although Britain left southern Yemen, in 1967 it maintained its claim that the Saudi-southern Yemen frontier, located in the Rub' Al-Khali Desert, was delimited according to the Violet line of the 1914 Convention because Saudi Arabia, as successor, was bound by the convention. To this effect, a British report issued in 1970 said:[11]

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[8] Ibid.
[9] Ibid., p.4.
[10] *The Buraimi Memorials*, p. 122.
[11] Public Record Office (PRO), ref. FCO 8/1455, dated 9th February 1970. See also former restricted document entitled 'The Borders of Southern Yemen: Anglo-Turkish Convention of 1914', available at PRO, ref. FCO 8/370-80017, dated January 1963. This reads 'As a result of the 1914-1918 war and the Treaty of Lausanne of 1923, Turkish sovereignty in Arabia disappeared, and the successor Arab States of Yemen [Imam of northern Yemen] and Saudi Arabia did not thereafter recognise the validity of the Anglo-Turkish Convention of 1914. Her Majesty's Government nevertheless adhered to the view that the borders laid down in the Convention were still, so far as they were concerned, the legal frontiers of the Aden Protectorate (now the People's Republic of Southern Yemen) and the limits of

> '2. The frontier line in this area was originally covered by the Violet Line of the Anglo-Turkish Convention of 1913 [the correct date is 1914], which laid down the agreed limits of Ottoman territory. HMG took the view that Saudi Arabia, as successor state to the Ottoman Empire in this area, was bound by the terms of the Convention, though Saudi Arabia has never accepted this concept, and has repeatedly claimed large tracts beyond the limits of the Violet Line. ...HMG have always regarded the Violet Line as forming the frontier between the two states ...'

When in 1969 Saudi Arabia and southern Yemen went to war over the Wadi'a area, a village located to north of the Violet line, the British Embassy's report reiterated the role of the 1914 Anglo-Turkish Convention and the Violet line as a boundary line between the two states:[12]

> '...the straight line of the Anglo/Turkish Convention of 1914 (the "Violet Line"), and the more northerly line declared by Her Majesty's Government to be the boundary in 1955 are well to the south of Wadi'a.'

Unfortunately, it is not possible to identify any records of the position of southern Yemen on the 1914 Anglo-Turkish Convention. Following the unification of northern and southern Yemen into the Republic of Yemen, however, Schofield suggested that Yemen, as one of many tactics or alternative arguments raised by that state, relied on the 1914 Anglo-Turkish Convention's Violet line. He explains:[13]

> 'The al-Wadi'a incident of 1969 occurred basically because South Yemeni forces transgressed the Violet line, even though Saudi Arabia officially maintained more southerly claims of its own in the central stretch of the indeterminate borderlands... Even the unified government of the Republic of Yemen has, on the odd occasion during the early 1990s, made utterances that the Violet line might be regarded as the operative border in this region.'

Based on his observation of the Saudi-Yemeni negotiations in the late of the 1990s, Schofield expected that the Violet line, or the 1914 Anglo-Turkish Convention, along with the 1935 suggested British line, would be respected by the two states:[14]

> '...because the old British claim lines correspond more closely to the current division of territorial control along the borderlands that it can be expected that the Saudi-Yemen land boundary – when it is finally agreed upon- will more or less equate to these lines (the 1914 Anglo-Ottoman Violet line in the west and the 1935 Riyadh line further east). This remains the conviction of this author, whether or not the boundary is ultimately agreed upon through bilateral consultations or, as seems most unlikely at present, through recourse to the international courts...'

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former Ottoman territory unless and until those frontiers should be altered by mutual agreement between Her Majesty's Government and the successor Arab States concerned.'

[12] PRO, FCO 8/ 1459, report issued by the British Embassy, Jedda, dated the 6th January 1970.

[13] Schofield, 'The International Boundary between Yemen and Saudi Arabia', in Detalle (ed.) *Tensions in Arabia: The Saudi-Yemeni Fault Line* (2000), p. 24.

[14] Ibid., p. 46.

Based on this available information on the role of 1914 Anglo-Turkish Convention in the development of Saudi-Yemeni claims, it can be concluded that there were two opposing views on the 1914 Anglo-Turkish Convention:

(a) the view of Britain, which it is likely would have been adopted by Yemen, that the 1914 Anglo-Turkish Convention was binding on Saudi Arabia as it created a boundary between the two predecessor states (the Ottoman Empire and Britain) and therefore Saudi Arabia was bound to respect the treaty as successor; and
(b) the Saudi claim that it was not bound by the treaty because it was signed by the Ottoman Empire who, based on the Saudi view, had no power to dispose or delimit the boundary due to lack of sovereign authority and because Saudi Arabia had no knowledge of the conclusion of the 1913-14 Conventions until 1934 when the British representative informed Saudi officials of them.

The attitudes of the interested states raise a number of legal issues related to the 1914 Convention. In particular, was the 1914 Anglo-Turkish Convention properly concluded and if so, did the treaty create a boundary? Following from this, does the 1914 Convention devolve to Saudi Arabia by succession, as it was claimed by Britain and possibly Yemen? Could Saudi Arabia counter the British-Yemeni claims on succession to the Convention because Saudi Arabia did not have knowledge of the treaty until 1934? Furthermore, what is the weight of the Saudi argument that the Ottomans lacked the necessary power to delimit the lands which were to become part of Saudi Arabia because Ibn Saud had already gained control and influence over Najd by that time?

(c) Validity of the 1914 Convention

The 1914 Convention is clearly an international treaty within the meaning of the term as agreed by jurists[15] and reflected in Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties which provides:[16]

> '"treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;'

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[15] For example, see Aust, *Modern Treaty Law and Practice* (2000) p. 14. Aust writes 'To be a treaty an agreement has to have an international character.' See also Shaw, *International Law* (2003) p. 811.
[16] In 1938, McNair described an international treaty as follows: 'As understood in the United Kingdom, the word 'treaty' denotes a *genus* which includes the many differently named instruments in which States, or Heads or the Governments of States, embody international (including therein inter-Governmental) agreements. There is no canon which determines which name is appropriate in each case...' See McNair, *The Law of Treaties British Practice and Opinions* (1938) p. 3.

Most commentators agree that the Vienna Convention on the Law of Treaties reflect some customary international law, including those rules which prevailed at the time of the 1914 Convention such as the *pacta sunt servanda* doctrine and rules of interpretation.[17]

International treaties, including the 1914 Anglo-Turkish Convention, are governed by the principle of '*pacta sunt servanda*', set out in Article 26[18] of the 1969 Vienna Convention. Shaw observed that:[19]

> 'The fundamental principle of treaty law is undoubtedly the proposition that treaties are binding upon the parties to them and must be performed in good faith.'

There is no one method by which a treaty becomes binding.[20] However, certain procedures may be required by international law, such as full powers and signature. In addition, some formalities may be required by internal law, usually by the constitution of a state. Aust explains:[21]

> '..., given the subject matter of treaties today, many need to be given some effect in domestic law ... How this done depends on the constitution of each state. Although no two constitutions are identical, there are two general approaches: 'dualism' and 'monism'. ... At one end is found the United Kingdom, which has perhaps the purist form of dualism. ... It is necessary, however, to be familiar with the different approaches since constitutional constraints on one of the negotiating states may affect the way final clauses are drawn, especially in respect of ratification,...'

No party is, however, allowed to avoid observance of a treaty due to violation of internal law unless there was a clear substantial violation of internal constitutional law which the other party should have noticed, as provided by Article 27[22] and Article 46[23] of the Vienna Convention on the Law of Treaties.

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[17] Shaw, *International Law*, p. 811; Shaw writes that 'Certain provisions of the Convention may be regarded as reflective of customary international law, such as the rules on interpretation, material breach and fundamental change of circumstances.'

[18] Article 26 says: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

[19] Shaw, *International Law*, pp. 811 and 815.

[20] Ibid., p. 815.

[21] Aust, *Modern Treaty Law and Practice,* p. 145.

[22] Article 27 reads 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.'

[23] Article 46 reads:

'1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.'

In view of these provisions, the 1914 Anglo-Turkish Convention had to fulfil three requirements to become a valid treaty viz., full powers, signature and ratification. First of all, the representatives negotiating a treaty must have had full powers to conclude a treaty. [24] Aust explained full powers as: [25]

> 'No more than a document produced as evidence that the person named in it is authorised to represent his state in performing certain acts in relation to the conclusion of a treaty, in particular its signature. The production of the full powers[26] is a fundamental safeguard for the representatives of other states that they are dealing with a person with necessary authority.'

Clearly, both Britain and the Ottoman Empire's representatives possessed full powers. The fact that the two representatives of Great Britain and Turkey were duly authorised to draft and sign the 1914 Convention is revealed by the Preamble of the Convention which reads:

> 'His Majesty the King of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, on the one hand;
>
> His Majesty the Emperor of the Ottomans, on the other hand;
>
> ...
> Have named as their plenipotentiaries:
> His Majesty the King of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India: the Honorable Sir Edward Grey, Baronet of the United Kingdom, Knight of the Most Honorable Order of the Garter, Member of Parliament, Principal Secretary of State of His Majesty for Foreign Affairs;
>
> His Majesty the Emperor of the Ottomans: His Higness Ibrahim Hakki Pasha, former Grand Vizier, decorated with the Grand Ribbons of the Imperial Order of Osmania and Majida in diamonds;
> Who, having communicated their full powers, the which being found to be in good and due form, have agreed on that which follows:..'

The second requirement is signature, as McNair described: [27]

> 'When the negotiations are concluded and the treaty has been embodied in proper form, the second step in the making of the treaty is reached; that is to say, the plenipotentiaries sign and seal it with their own seals.'

In fulfilment of this requirement, the Ottoman and British plenipotentiaries signed and sealed the 1914 Convention, as recorded at the end of the Convention:

> 'In pledge whereof, the respective plenipotentiaries have signed the present convention and affixed thereto their seals.'

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[24] McNair, *The Law of Treaties: British Practice and Opinions*, p. 135.
[25] Aust, *Modern Treaty Law and Practice,* p. 57.
[26] Moreover, the full powers are required for a termination or denunciation of treaties, as the International Law Commission (ILC) suggested. Article 7 of the (1969) Vienna Convention on the Law of Treaties enunciated two different stances: Article 7(1) when a person needs full powers and is considered to have them; and Article 7(2) when the functions of the representatives could exempt the person from having to prove full powers, for example Heads of States, Heads of Governments, and Foreign Affairs Ministers.
[27] McNair, *The Law of Treaties: British Practice and Opinions,* p. 62.

The third requirement is ratification of the treaty. Ratification of the 1914 Convention was required by the Article 7 of the Ottoman Constitution of 1909, which provided:[28]

> 'Among the Sovereign prerogatives of the Sultan are the following:
> ... the conclusion of all Treaties. But the consent of Parliament is required for conclusion of Treaties which concern peace, commerce, the cession or annexation of territory,...'

However, the British Crown enjoyed the power of concluding treaties as observed by Holloway:[29]

> 'Constitutionally the treaty-making power resides in the Crown acting on the advice of the Prime Minister.'

Consequently, Article IV of the Convention provided:

> 'The present Convention shall be ratified and the instruments of its ratification shall be exchanged at London as soon as possible, and with no greater delay than three months.'

Ratification of the 1914 Convention occurred in London when instruments of ratification were exchanged on the 3rd June 1914, after it was signed and sealed on the 9th March 1914. The Convention entered into force on the same day of ratification as recorded in *Index of British Treaties (1101-1968).*[30]

Consequently, the 1914 Anglo-Turkish Convention was legally binding on the two contracting parties and was capable of devolving to successor states. Whether they did so is examined below.

(d) Interpretation of the 1914 Convention as a boundary treaty

Aust, like many other contemporary writers[31], remarked that treaties almost always require interpretation of their wordings. He suggested:[32]

> 'Despite the care lavished on drafting, and accumulated experience, there is no treaty which cannot raise some question of interpretation. Most disputes submitted to international adjudication involve some problem of treaty interpretation.'

This indicates a change in the practice prevailing until the early twentieth century whereby treaties were not interpreted unless the meaning of the text was unclear[33]; Vattel explained:[34]

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[28] See *Hertslet's Commercial Treaties,* vol. 16 (1913) pp. 968-969.
[29] Holloway, p. 191.
[30] See *Index of British Treaties (1101-1968),* vol. 2., 578.
[31] For instance, McDougal, Lasswell, and Miller, *The Interpretation of Agreements and World Public Order* (1967), pp. 78-81, cited in Whiteman, *Digest of International Law, vol. 14* (1970) pp. 353-355.
[32] Aust, *Modern Treaty Law and Practice*, p. 184.
[33] Examples are: Hall, *A Treatise on International Law,* (1917) 7th ed., p. 334; Phillimore, *Commentaries Upon International Law*, (1879) 3rd ed., pp. 99-100; Crandall, *Treaties: Their Making*

> 'The first general rule of interpretation is that *it is not permissible to interpret what has no need of interpretation*. When a deed is worded in clear and precise terms, when its meaning is evident and leads to no absurdity, there is no ground for refusing to accept the meaning which the deed naturally presents ...'

To determine whether the 1914 treaty created a boundary necessitates interpretation of the treaty. The ordinary meaning of the treaty indicates that it did indeed create a boundary between two sovereign states. This can be understood from the preamble and other articles of the treaty emphasising that the aim of the treaty was to provide a boundary line between the territories of the Ottoman Empire, mainly northern Yemen (then called the Vilayet of Yemen) and Najd, and the territories under British sovereignty or control; the 1914 Convention was a completion of a previous unfinished delimitation indicated in different treaties signed in 1903, 1904, and 1905 in addition to the 1913 Anglo-Turkish Convention. The Preamble to the 1914 treaty provides:[35]

> 'His Majesty the King of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, on the one hand;
>
> His Majesty the Emperor of the Ottomans, on the other hand;
>
> Both desiring to complete and ratify the protocols (Annex A) signed by the British and Ottoman commissioners in 1903, 1904, and 1905 to indicate the line of demarcation of the frontier agreed on by them for the purpose of separating the vilayet of the Yemen from the nine districts of Aden such as is shown in blue on the four appended maps (Annex B);

In addition, Article III of the 1914 Convention indicated the Violet line as the boundary of the Ottoman territory (including Najd) running within the Rub' Al-Khali; the Violet line is agreed between two sovereign states for indicating a limit where they shall exercise their sovereignty:

> 'Article III
> Point No. 1 of Wadi Bana, shown on the first of the annexed maps (Annex B) of the present convention, being the last point on the eastern coast delimited over these places, it is agreed between the Sovereign Parties here contracting and agreeing, in conformity with the above-cited protocol and with due regard for conditions and specifications there contained, that the boundary of Ottoman territory shall follow a straight line extending from Lakmat al-Shuub north-eastwards to the desert of the Rub al-Khali at a 45° angle. This line shall rejoin the Rub al-Khali at parallel 20 degrees, the straight and direct line southwards which breaks off at a point on the southern coast of the Gulf of al-Uqair and which separates the Ottoman territory of the sanjak of the Najd from the territory of Qatar, in agreement with Article 11 of the Anglo-Turkish Convention of 29 July 1913, concerning the Persian Gulf and neighbouring territories.
>
> The first of the two lines is shown in violet and the second blue on the special map annexed hereto (Annex C).'

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and Enforcement, (1916) 2nd ed., pp 396-97; Whiteman, *Digest of International Law, vol. 14,* p. 353-354.

[34] Vattel, *The Law of Nations* (1916) p. 199 as cited in ibid., p.353.

[35] Full text of the 1914 Convention is available in Appendix 1.2

Article III made it clear that the Violet line indicated the line of the boundary of the Ottoman territory in conformity with the definition of territorial boundary of states, as explained in Oppenheim:[36]

> 'Boundaries of state territory are...the imaginary lines on the surface of the earth which separate the territory of one state from that of another, or from unappropriated territory,...'

Moreover, the 1914 Convention reflected the common practice in international law when a boundary is delimited by a treaty:[37]

> 'The common practice for land boundaries is, in a boundary treaty or award, to describe the boundary line in words...'

In addition, interpretation of the 1914 Convention according to the principles in Article 31 of the Vienna Convention on the Law of Treaties (reflecting customary international law[38]) supports the conclusion that the 1914 Convention is a boundary treaty. Article 31 provides in part:

> '1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
> (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
> ....
>
> 3. There shall be taken into account, together with the context:
> ...
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
> ...
>
> 4. A special meaning shall be given to a term if is established that the parties so intended.'

In view of these comprehensive and balanced guidelines[39] taking into consideration all treaty-related factors viz., text, preamble, intention of parties, etc... , it is safe to say that the

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[36] Jennings and Watts Oppenheim's *International Law* (1992) p. 661. See also chapter 2.
[37] Ibid., p. 662.
[38] See Aust, *Modern Treaty Law and Practice,* p. 186. In the *Case concerning the Territorial Dispute (Libya/Chad)* (1994) ICJ Reports, para. 41, the Court held that 'in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith...'
[39] See Aust, *Modern Treaty Law and Practice*, p. 185. He says 'The International Law Commission rejected the view that in interpreting a treaty one must give greater weight to one particular factor, such as the text ('textual' or 'literal' approach), or the supposed intentions of the parties, or the object and purpose of the treaty ('effective' or 'teleological' approach). Reliance on one to the detriment of the others was contrary to the jurisprudence of the International Court of Justice. Placing undue emphasis on the text; without regard to what the parties intended; or on what the parties are believed to have intended, regardless of the text; or on the perceived object and purpose in order to make the treaty more 'effective', irrespective of the intentions of the parties, is unlikely to produce a satisfactory result. ' See also McNair, *The Law of Treaties,* pp.364-473.

1914 Convention is a boundary treaty. Firstly, the 1914 Convention's preamble indicated that the Convention's purpose was to continue the delimitation of the border between the two sovereign states. Furthermore, Article III of the 1914 Convention made reference to maps depicting agreed lines of boundaries and these maps were annexed to the 1914 Convention. Finally, in the light of Vienna Convention's Article 31 (3)(b), it is noted that the subsequent conduct of Britain, as a party to the 1914 Anglo-Turkish Convention, insisted on the argument that the 1914 Anglo-Turkish Convention was the treaty which delimited the boundary between then Ottoman Najd (later Saudi Arabia) and southern Yemen.[40] Additionally, it is noted that the two parties did not agree on any other special meaning which affects the general meaning of the treaty as a boundary treaty and there is no justification to believe otherwise.

In the Case concerning the *Territorial Dispute between Libya and Chad*, the ICJ found that the Treaty of Friendship and Good Neighbourliness between the French Republic (predecessor of Chad) and the United Kingdom of Libya of the 10th August 1955 did create a frontier between Libya and Chad. In that case, the Court held, referring to its previous decision:[41]

> 'The Fact that Article 3 of the Treaty [the 1955 French-Libya Treaty] specifies that the frontiers recognized are "those that result from the international instrument" defined in Annex I means that all of the frontiers result from those instruments. Any other construction would be contrary to the actual terms of Article 3 and would render completely ineffective the reference to one or more other of those instruments in Annex I. As the Permanent Court of International Justice observed, in its Advisory Opinion of 21 November 1925, dealing with a provision of the Treaty of Lausanne "*intended to lay down the frontier of Turkey*" (emphasis in original), "the very nature of a frontier and of any convention designated to establish frontiers between two countries imports that a frontier must constitute a definite boundary throughout its length" (Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne, Advisory Opinion, 1925, PCIJ., Series B, No. 12, P. 20, emphasis added.)'

It is suggested that there is a similarity between the treaty involved in that case and the 1914 Anglo-Turkish Convention.

Additional support to this view is found in *Case concerning Sovereignty over Certain Frontier Land (Belgium/Netherlands)*[42] decided by the ICJ in 1959. The Court took into consideration the preamble to a Boundary Convention as showing the intent of the parties:[43]

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[40] See above.
[41] *Case Concerning the Territorial Dispute (Libya/Chad)* (1994) ICJ Reports, pp. 24-25, para 49.
[42] *Case concerning Sovereignty over Certain Frontier Land (Belgium/Netherlands)* (1959) ICJ Reports.
[43] Ibid., pp. 221-222.

> Any interpretation under which the Boundary Convention is regarded as leaving in suspense and abandoning subsequent appreciation of the status quo the determination of the right of one State or the other to the disputed plots would be incompatible with that common intention.'

Interestingly, the International Court of Justice relied on various grounds including the so-called the 1913 Anglo-Turkish Convention, though not ratified, when deciding title to Zubarah in favour of Qatar in the *Qatar/Bahrain Case*.[44]

In contrast to the view that the 1914 treaty delimits a boundary, other commentators suggest that the treaty in fact was concerned with delimiting a so-called 'sphere of influence'. Schofield suggested:[45]

> 'Like the 1913 Blue line, the 1914 Violet line was designated to mark the limits of Ottoman influence, this time within southern Arabia. In keeping with the (British) Government of India's liking for buffer zones and spheres of influence, the Anglo-Ottoman lines had basically been introduced as forward defence lines for British India to safeguard its omnipotence in the Gulf and Aden. The lines bore no relations whatsoever to indigenous modes of social and spatial organisation within Arabia. They basically separated spheres of influence as perceived by the British Home government from non-British spheres of influence. Though the product of Anglo-Ottoman agreements, they were basically a British *diktat*, imposed upon a desperately weak Ottoman government which had far more pressing concerns nearer home.'

This view is supported by a legal opinion prepared in 1934 by Beckett for the British Government. Beckett emphasised the fact that a sphere of influence had no legal value under international law in a legal opinion on the status of the 1913-14 Anglo-Turkish Conventions and the possibility that Saudi Arabia could claim title to lands to the east of the Blue line adjacent to Qatar. In his report, he says: [46]

> 'Spheres of influence in international law, whatever their political significance, mean nothing at all.'

However, Beckett was dealing with the Saudi-British conflict over the eastern Saudi frontier with Qatar covered by the Blue line created in the 1913 Anglo-Turkish Convention and not the Saudi-south Yemeni frontier which was covered by the legally distinct 1914 Anglo-Turkish Convention. It is suggested that the text of the 1914 Anglo-Turkish Convention

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[44] *Case concerning Maritime Delimitation and Territorial Questions (Qatar/Bahrain)* (2001) ICJ Reports. The Court observed that '...unratified treaties may constitute an accurate expression of the understanding of the parties at the time of signature. In the circumstances of this case the Court has come to the conclusion that the [1913] Anglo-Ottoman Convention does represent evidence of the views of Great Britain and the Ottoman Empire as to the factual extent of the authority of the Al-Thani Ruler in Qatar up to 1913.'; ibid., para. 89.

[45] Schofield, 'The International Boundary between Yemen and Saudi Arabia', p. 22.

[46] See Document [P.Z. 6052/34], PRO. IOLR file [R/15/1/603] India Office, dated 31st August 1934, signed by Christopher Warner, p. 7.

leaves no doubt that the two states intended to create a boundary line, not 'spheres of influence'. Had they wished to create a 'sphere of influence' treaty, the Ottomans and British could have indicated this desire in the text of the treaty. Such treaties were common at that time. Akweenda indicated examples of sphere of influence treaties: [47]

> 'The *German-Portuguese Declaration* of 30 December 1886, the *Anglo–German Agreement* of 1 July 1890 and several agreements...have adopted the term "sphere of influence".'

Moreover, in *Case concerning Kasikili/Sedudu Island (Botswana vs. Namibia)*, the ICJ was asked to decide the dispute based on the 1890 Anglo-German Agreement. The text of the agreement in that case clearly declared that it was concerned with delimiting a 'sphere of influence', as revealed:[48]

> '43. ... While the treaty in question is not a boundary treaty proper but a treaty delimiting spheres of influence ...
>
> Article VII of the 1890 Treaty is worded as follows:
> "The two Powers engage that neither will interfere with any sphere of influence assigned to the other by Articles I to IV. One Power will not in the sphere of the other make acquisitions, conclude Treaties, accept sovereign rights or Protectorates, nor hinder the extension of influence of the other.
>
> It is understood that no companies nor individuals subject to one Power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter."'

Based on the above analysis it is safe to conclude that the 1914 Anglo-Turkish Convention was a boundary treaty.

(d) Succession to the 1914 Convention as a boundary or 'dispositive' treaty

Once it is decided that the 1914 Convention is a boundary treaty, a second question arises as to whether the 1914 Convention devolves to Saudi Arabia by succession? Generally speaking succession of states means that sovereignty (including rights and obligations) or competence belonging to a former state within certain territory is transfered to the state replacing the old state within the concerned territory. O'Connell defines the term:[49]

> '...the factual situation which arises when one State is substituted for another in a given territory.'

Udokang refers to another wider definition suggested by Waldock, Special Rapporteur on the Succession of States and Governments in respect of treaties:[50]

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[47] Akweenda, *International Law and the Protection of Namibia's Territorial Integrity: Boundaries and Territorial Claims* (1997) p. 8.
[48] *Case concerning Kasikili/Sedudu Island (Botswana/Namibia)* (1999) ICJ Reports, para. 43.
[49] O'Connell, *State Succession in Municipal Law and International Law* (1967) vol. 1, p. 3.
[50] Udokang, *Succession of New States to International Treaties* (1972) p. 106.

> '... a change in the possession of competence to conclude treaties with respect to a given territory.'

Thus a state is called 'successor' when taking the place of the old state which is called the 'predecessor' within a certain territory.[51]

Udokang believed that Waldock's definition is wider so that it included various international situations of territory whether it is under direct sovereignty of a state or placed under international mandate, trusteeship, protectorate or maritime zones over which the coastal state may enjoy limited jurisdiction.[52]

Cukwurah emphasised the general rule of international law in succession to international boundary treaties:[53]

> 'As regards boundary treaties, it is established in theory and by state practice that upon ratification, the agreement becomes executed and thereafter operates as a kind of conveyance.'

As Cukwurah said, examination of writings of jurists[54], provisions of treaties and international cases emphasise that boundary treaties devolve to new states due to succession, serving international stability – this constitutes an important exception to Article 16[55] of the 1978 Vienna Convention on Succession of States in Respect of Treaties[56] which sets out the

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[51] O'Connell, *The Law of State Succession* (1956) p. 6. O'Connell noticed a dispute regarding nature of the substitution between successor state and predecessor state, saying 'The nature of the substitution of the one for the other, however, is disputed.' He went on to explain this dispute in nature of succession due to conflict amid various theories of succession, for instance theory called 'universal succession' considering successor state as '...direct heir to its predecessor's personality and legal relationships, in exactly the same way as the *heres* of Roman law continued the personality and legal relationships of the deceased. The liabilities of a State attach themselves,..., to its territory and pass with it. The ensemble of rights of rights and obligations devolves *ipso jure* from the one sovereign to the other without exception and without modification. The doctrine of universal succession ...is now largely rejected by theorists'; pp. 6-7. Other theories of succession are also questionable and base themselves on the idea of 'continued identity of the absorbed territory itself'. O'Connell noticed that these theories, although reflecting an old concept in State practice 'in the growth of the notion of a *dette hypothéquée sur le sol*, referred to as such in many treaties the Napoleonic period, it has been found to be one impossible to apply in its entirety. Relationships of municipal law may continue to bind a territory which remains fiscally autonomous, but such territory cannot be bound by jural relationships of international law which were properly personal to the extinguished or expelled sovereignty.' See O'Connell, pp. 6-11.

[52] Udokang, *Succession of New States to International Treaties*, pp. 106-107.

[53] Cukwurah, *The Settlement of Boundary Disputes in International Law*, pp.105-106

[54] See Shaw, *Title to Territory in Africa* (1986) pp-233-244; McEwen, *International Boundaries of East Africa* (1971) pp 21-22; Udokang, *Succession of New States to International Treaties,* pp. 377-402.

[55] Article 16 reads 'A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates'.

[56] Adopted on the 22nd August 1978 and entered into force on the 6th November 1996.

so-called 'clean slate theory' and also an exception to the rule of *rebus sic stantibus* as provided in Article 62(2) (a) of the 1969 Vienna Convention on the Law of Treaties.[57] [58]

Had the clean slate doctrine been applied to include boundary treaties it would have opened doors to new states to denounce old boundary treaties signed by their predecessors, raising territorial claims beyond the boundary lines which were agreed by predecessor states. It is true that some states supported the application of the clean slate theory based on the principle of self-determination of peoples, but the International Law Commission opted to stick to the established rule that succession is applied to boundary treaties in exception to the 'clean slate rule'. Waldock explained:[59]

> '...the weight both of opinion and practice seems clearly to be in favour of the view that boundaries established by treaties remain untouched by the mere fact of a succession. The opinion of jurists seems, indeed, to be unanimous on the point even in their reasoning may not always be exactly the same. In State practice the unanimity may not be quite so absolute; but the State practice in favour of the continuance in force of boundaries established by treaties appears to be such as to justify the conclusion that a general rule of international law exists to that effect.'

Thus, Article 11of the 1978 Convention provides:[60]

> 'A succession of States does not as such affect:
> (a) a boundary established by a treaty; or
> (b) obligations and rights established by a treaty and relating to the regime of a boundary.'

Bedjaoui, as member of the ILC, justified this principle of succession due to fact that states inherit territory within its fixed boundaries:[61]

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[57] Article 62 (a) reads '2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary;'

[58] See *Yearbook of the International Law Commission* (1972).

[59] See *Yearbook of International Law Commission* (1968) pp. 92-93.

[60] See also Article 12 of the same convention which says:
'1. A succession of States does not as such affect:
(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;
(b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.
2. A succession of States does not as such affect:
(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;
(b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.
3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.'

[61] Ibid., p. 112. See also Shaw, *Title to Territory in Africa,* p. 233 and footnote 99.

> 'In principle the territory devolves upon the successor State on the basis of the pre-existing boundaries. These boundaries will have been established by a treaty…'

O'Connell is amongst the majority of commentators who support this rule: [62]

> 'Since a State can acquire from another only so much territory as that other possessed, the latter's boundary treaties with neighbouring States delimit the extent of the territory absorbed.'

Clarifying the application of the rule, Lester says that the new state inherits the boundary established by the treaty rather than the treaty itself, though in event of a dispute the treaty is referred to:[63]

> 'A Successor State then succeeds not to the treaty as such but to the boundaries of its territories, as it does to the other facts of its international life.'

Commenting on the extent of succession to a boundary treaty, Cukwurah says:[64]

> 'It follows, therefore, that once the boundary provisions are executed, they lose their contractual character and may be severed from additional provisions, other than those delimiting the line. But this will not preclude the parties from citing the contents of the treaty, where relevant, as the *indicia* of title, in any subsequent controversy.'

The automatic succession of states to boundary treaties is also supported in the practice of states. Thus, in a dispute between Afghanistan and Pakistan over the location of the border, the Anglo-Afghan Treaty of 1893 creating the so-called 'Durand Line' was of central importance. This line related to the province of Pushtoonistan located between Afghanistan and the former Indian sub-continent; Pakistan, after independence in 1947, became involved in the dispute with Afghanistan on this region, as further explained:[65]

> 'In 1946, when the United Kingdom Government announced its intention to relinquish sovereignty over the Indian sub-continent and grant independence to its peoples, Afghanistan announced that in its view the 1893 treaty would lapse automatically with the transfer of sovereignty. The Government of India denied this proposition, which was aimed at re-opening the border question *de novo*. In a note to Afghanistan on July 1, 1947, the

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[62] O'Connell, *The Law of Succession State*, p. 50. An International Law Association Resolution on the subject says that '…when a treaty which provides for the delimitation of a national boundary between two States has been executed in the sense that the boundary has been delimited and no further action needs to be taken, the treaty has spent its force and what is succeeded to is not the treaty but the extent of national territory so delimited.' Also see McNair, *Law of Treaties* (1961), pp. 656-657; Udokang, *Succession of New States to International Treaties,* p. 378; Shaw, *Title to Territory in Africa*, pp. 233-235. Shaw explained 'Although this exception to the clean slate rule has been virtually universally accepted in doctrine, some authors have tended to be rather cautious. Mochi Onory writes that boundary disputes often concern the maintenance or otherwise of rights guaranteed in connection with, and as a condition of, the settlement of the boundary and that the dispute over these rights tends to provoke the reopening of the boundary itself, while Udina notes that succession occurs only through the tacit agreement of the neighbouring State. The latter proposition would appear not to be supported by either international doctrine or State practice'; ibid., p 235.

[63] Lester, 'State Succession to Treaties in the Commonwealth' (1963) *International and Comparative Law Quarterly*, vol. 12, p. 492.

[64] Cukwurah, *The Settlement of Boundary Disputes In International Law,* p. 106.

[65] Ibid., pp. 364-365.

> British Government stated that it considered that the treaties of 1893 and 1921 would continue to regulate the boundary position. In 1949, Mr. Noel-Baker, then Secretary for Commonwealth Relations, said in the House of Commons:
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> "His Majesty's Government in the United Kingdom have seen with regret the disagreements which there have been between the Governments of Pakistan and Afghanistan about the status of the territories on the North-Western Frontier. It is His Majesty's Government's view that Pakistan is in international law the inheritor of the rights and duties of the old Government of India and of His Majesty's Government in the United Kingdom, in these territories and that the Durand Line is the international frontier."'

Regarding state practise, it appeared that few states tried to avoid their succession to boundary treaties signed during colonisation by themselves or by their predecessor. To illustrate, Britain, in instances going back to the nineteenth century, required new states to respect the succession to boundary treaties and most new states complied positively, for instance, Belgium:[66]

> 'In 1830, Belgium, which had formed part of Holland since 1815, declared her independence and by a Treaty of November 15, 1831, to which Austria, France, Great Britain, Prussia, and Russia, but not the Netherlands, were parties, her independence was recognized and she became a new State. The British Government addressed a Note on August 22, 1831, to the British Minister in Brussels, concerning the obligation imposed upon the Netherlands by a Treaty of May 31, 1815, made by that State with Great Britain, Austria, Prussia, and Russia, to maintain certain fortresses upon what was then the French boundary of the Netherlands and became in 1831 the French boundary of Belgium. In this Note it was asserted:
>
> "...the King of Belgians is considered by [the Four Powers mentioned] as standing with respect to these Fortresses and in relation to the Four Powers, in the same situation, and bound by the same obligations as the King of the Netherlands previous to the Revolution."'

The same author also referred to the agreement reached by Great Britain and the United States on adherence to succession of boundaries which the US Secretary of State considered as a reflection of an established principle common to former European colonies in America:[67]

> 'The United States of America, which did not regard itself as bound by the United Kingdom treaties after secession, accepted the boundaries which had been previously established and has maintained this standpoint in other similar cases. Thus, when the question arose as to whether the conduct of Great Britain in regard to Central America was at variance with the provisions of the Clayton-Bulwer Treaty of April 19, 1850, Mr Marcy, Secretary of State, declared in a communication to Mr Dallas, American Minister to Great Britain, on July 26, 1856:
>
> "My first prefatory observation in this: The United States regard it is as an established principle of the public law and of international right that when a European colony in America becomes independent it succeeds to the territorial limits of the colony as it stood in the hands of the parent country. That is the doctrine which Great Britain and the United States concurred in adopting in the negotiations of Paris, which terminated this country's war of independence.'

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[66] Cukwurah, *The Settlement of Boundary Disputes in International Law*, p. 107.
[67] Ibid., p. 106.

In addition, new states coming into existence as a consequence of decolonisation, including former British colonies and protectorates[68] in Africa and Asia, adhered to the rule of succession to boundary treaties, visible both in devolution agreements, as well as in Organization of African Unity Resolution 16 (I) of 1964 reading:[69]

> 'All member states pledge themselves to respect the borders existing on their achievement of national independence.'

Thus generally speaking, states, except in very few examples such as Morocco and Somalia[70], have respected boundary treaties which they inherited from their predecessor even when disputes have arisen. Furthermore, in deciding disputes, international courts and tribunals have also emphasised succession to boundary treaties since they create an objective judicial situation, and as one writer suggested, these treaties are *sui generis*[71] and they are not tied with the fate of their contracting parties. In the *Temple* case, the ICJ Judgment provided:[72]

> 'In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, when ever any inaccuracy by reference to a clause in the present treaty is discovered. Such a process could continue indefinitely, and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious.'

The Court considered the 1904 French-Siam (later Thailand) Treaty which delimited the boundary between what became Cambodia (under French protection) and Siam. Cambodia

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[68] For instance, Great Britain agreed according to devolution agreements with new states - such as Burma, Ghana, Nigeria and Malaya and others - that they inherit their territorial boundaries, see Cukwurah, *The Settlement of Boundary Disputes in International Law,* pp. 107-108.

[69] See Bronwlie, *African Boundaries* (1979) pp. 9-12; the ICJ's Chamber also referred to the same resolution in its Judgment in *Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriyah), ICJ Reports* (1982), p. 52, para. 84.

[70] These two states had rejected the OAU Resolution 16 of 1964 and objected to Articles 11 and 12 of the 1978 Vienna Convention on Succession of States to Treaties during the United Nations Conference on Succession of States (1977); see UN Document *A/CONF.80/5* dated 1st March 1977. See also Taha, *International Law and Boundary Disputes (in Arabic)* (1999) pp. 79-80 and footnotes 9-10. Moreover Afghanistan, despite being an original signatory to the Anglo-Afghan Treaty of 1921 defining the boundary between Afghanistan and British India, challenged continuity of the treaty and the boundary after India and Pakistan gained independence. Afghanistan alleged that the treaty was terminated due to the disappreance of Britain and in respect of self-determanation and the clean slate principle, and called for a new delimitation. However, Pakistan and India (supported by Britain) rejected that allegation, based on state succession to boundary treaties. See *United Nations Materials on Succession*, New York (1967), pp. 1-5 and pp. 186-187. The British Foreign Office stated that the executive clauses in international treaties relating to boundaries remain unaffected regardless the position about the Treaty itself; see UN Materials on Successions, p. 187.

[71] Cukwurah, *The Settlement of Boundary Disputes in International Law,* p. 108.

[72] *Temple of Preah Vihea (Cambodia/Thailand)* (1962) ICJ Reports, p. 47.

and Thailand respected the succession to the treaty but disagreed about demarcation. O'Connell commented on the judgment as saying:[73]

> 'The majority of the Court, when the substantive question was dealt with, decided in favour of the Cambodian claim on a combined basis of the 1904 treaty and Thailand's acquiescence in the unauthorized map. The importance of the decision for the law of State succession lies in the implication that the 1904 treaty, and the boundary settlements at the time, continued to bind Thailand and Cambodia.'

Similarly, in the *Case concerning the Continental Shelf* between Libya and Tunisia the Court noted the adherence of the two parties to the 1910 Convention signed by the Bey of Tunis (under French protection) and the Emperor of the Ottomans having sovereignty over Libya for land boundary delimitation. The Convention was duly concluded and entered into force. Following decolonization, the 1910 frontier became that between the independent states of Tunisia and Libya; the two states respected succession to the 1910 treaty and the 1964 Organization of African Unity's Resolution 16 on state succession to colonial boundaries. Thus the Court recalled the continuity *ipso jure* of boundary and territorial treaties, finding:[74]

> '85. The Court regards the 1910 Convention as important for the consideration of the present case, because it definitely established the land frontier between the two countries.'

Adherence to succession to boundary treaties was also repeated in the case of *Kasikili/Sedudu Island* where the Court was asked to consider the 1890 Anglo-German Agreement in its deliberations.[75]

In the *Libya/Chad* case, the International Court of Justice applied the succession rule to the boundary treaty signed by France (while having protection over Chad) and Libya in 1955, although Libya rejected the alleged delimitation of the 1955 Treaty. Chad as a successor to France insisted that the 1955 Treaty did delimit the boundary and asked the Court to consider the 1955 Treaty in its judgement. The Court referred to Chad's succession to the 1955 Treaty and stated that the treaty created a boundary which enjoys permanence regardless of the treaty's fate.[76] The Court decided in favour of Chad, saying:[77]

> 'The Court...
> (1) Finds that the boundary between the Great Socialist People's Libyan Arab Jamahiria and the Republic of Chad is defined by the Treaty of Friendship and Good Neighbourliness concluded on 10 August 1955 between the French Republic and the United Kingdom of Libya;...'

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[73] O'Connell, *State Succession in Municipal Law and International Law*, *vol. 2,* p. 147.
[74] *Case concerning the Continental Shelf* (1985) ICJ Reports, pp. 65-66 at paras. 84-85; see also para. 83.
[75] *Case concerning (Kasikili/Sedudu) Island (Botswana/Namibia)* (1999) ICJ Reports, para. 19.
[76] *Case concerning the Territorial Dispute (Libya/Chad)* (1994) ICJ Reports, p. 37, para. 73. and p. 38, para. 75.
[77] Ibid., p. 40.

In the *Case concerning the Gabcíkovo-Nagymaros Project (Hungary/Slovakia)*, rejecting Hungary's claim that Slovakia could not be become a successor automatically to Czechoslovakia in the Treaty of the 16th September 1977 concerning the construction and operation of the Gabcíkovo-Nagymaros System of Locks, the Court decided that the Treaty due to its dispositive nature, devolved to Slovakia as of the 1st January 1993 when the Czech Republic and Slovakia became two new states following the disappearance of Czechoslovakia as a state on the 31st December 1992.[78] The Court referred to Article 12 of the 1978 Vienna Convention on Succession of States in respect of Treaties and denied the Hungarian claim that no automatic succession was allowed without the consent of the parties. The Court supported Slovakia's view that she was a successor and the treaty continued to determine the legal relationship between Slovakia and Hungary.

In addition, in 2002 in the *Case concerning Land and Maritime Boundary (Cameroon/Nigeria)*[79] the ICJ decided that the boundary in the Bakassi Peninsula between Cameroon and Nigeria would be delimited according to various grounds including the 1913 Anglo-German Agreement[80] despite Nigeria's dismissal of the agreement due to alleged invalidity.

Therefore boundary treaties belong to a category of 'dispositive or servitude or even arguably localised' treaties'[81] which devolve to new states. Composed of prominent international law jurists and lawyers, the Committee on State Succession to Treaties and other Governmental Obligations reported that boundary treaties are dispositive treaties which are known for survival in the case of changes of sovereignty over a territory because these treaties are less contractual than in the nature of territorial settlements.[82] Furthermore, the Committee emphasised:[83]

> '...boundary treaties are the examples par excellence of dispositive treaties.'

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[78] *Case concerning the Gabcíkovo-Nagymaros Project (Hungary/Slovakia)* (1997) ICJ Reports.
[79] *Case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon/Nigeria: Equatorial Guinea intervening)* (2002) ICJ Reports.
[80] Ibid., para. 325 at pp. 146-148.
[81] Generally speaking, treaties in international law are divided into 'personal or political treaties' such as alliance treaties, and 'dispositive or localised treaties' connected to the treaty of a state. The personality of the contracting state is important for the performance of a personal treaty while the dispositive treaty operates regardless of continuity the contracting sovereign, such as in the case of treaties creating boundary of territories or servitude rights and duties. See O'Connell, *State Succession in Municipal Law and International Law, vol. 1* (1967) pp. 15-48 and pp. 49-63. For further readings on types of boundary and dispositive treaties, see *The Effect of Independence on Treaties,* prepared by the Committee on State Succession to Treaties and other Governmental Obligations (1965) pp. 352-367.
[82] Ibid., p. 352.
[83] Ibid., p. 361.

As a boundary treaty, the 1914 Convention is similar to many international boundary treaties concluded by foreign powers, for instance the boundary fixed between Nigeria and Dahomey according to a treaty concluded by France and Britain on the 19th October 1906.[84]

Therefore, it is safe to conclude that the British and Yemeni argument based on succession to the 1914 Anglo-Turkish Convention due to its boundary/title character is supported by international law. However, it must be noted that if the issue was judged by a tribunal, it does not follow that the tribunal would apply the Violet line *stricto senso* if it appeared that the subsequent conduct of the parties was contradictory. These issues shall be examined in chapter 4.

(e) Saudi lack of knowledge of the 1914 Convention

A further argument advanced by Saudi Arabia against British-Yemeni claims on succession to the 1914 Convention concern the lack of knowledge of Saudi Arabia of any delimitations or boundary treaties, including the 1914 Anglo-Turkish Convention. To illustrate, Saudi Arabia alleged that Britain did not inform her of a delimited boundary when they concluded the Anglo-Saudi Treaty[85] of the 26th December 1915. The 1915 Treaty provided in Article I that Britain would discuss with Ibn Saud the boundaries of his territories which Britain recognised to include Najd, Hasa and other lands which were also ruled by Ibn Saud and his predecessors. Article I reads:

> 'The British Government do acknowledge and admit that Najd, Al Hasa, Qatif and Jubail, and their dependencies and territories, which will be discussed and determined hereafter, and their territories and ports on the shores of the Persian Gulf are the countries of Bin Saud and of his fathers before him and do hereby recognise the said Bin Saud as the independent ruler thereof and absolute Chief of their tribes, and after him his sons and descendants by inheritance, but the selection of the individual shall be in accordance with the designation of his successor (by the living Ruler) or by the calling for the votes of the subjects inhabiting those countries.'

Saudi Arabia further claims that they were not informed in a timely fashion by Britain about the 1914 Anglo-Turkish Convention until 1934 when the Saudis asked for boundary delimitation.

It is an unclear why the British Government agreed to a future discussion of the boundary delimitation with Ibn Saud, as provided in Article I of the 1915 Anglo-Saudi Treaty, but it

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[84] See *Case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon/Nigeria: Equatorial Guinea intervening)* (2002) ICJ Reports.
[85] See Appendices 1.5 and 1.6

did not inform him that he was considered as a successor to the Ottomans. Any answer could only be speculative. However, it is noted that it is usually new states who declare their adherence to their predecessor states' treaties relevant to the new states' territories frontiers, instead of those states who signed those treaties with the predecessors of the new states as explained below. In some cases, new states are reminded by other contracting states about the obligations and rights that the new states were considered to inherit after emerging from predecessor states' sovereignty or protection.

On the issue of whether there was a contradiction between the 1915 Anglo-Saudi Treaty and the delimitation in the 1914 Anglo-Turkish Convention, it might be noted that the 1914 Anglo-Turkish Convention was legally concluded and ratified by two sovereign states who in clear terms delimited their boundaries. Therefore, the 1914 Anglo-Turkish Convention and the delimitation remained unaffected by the 1915 Anglo-Saudi Treaty which was signed by only one sovereign state while the other party was not a full sovereign state at that time. Ibn Saud was recognised as an independent ruler and chief of tribes but he was under an obligation not to contact foreign powers unless allowed by Britain, as provided by Article III of the 1915 Anglo-Saudi Treaty:

> 'Bin Saud hereby agrees and promises to refrain from entering into any correspondence, agreement, or treaty, with any Foreign Nation or Power, and further to give immediate notice to the political authorities of the British Government of any attempt on the part of any other Power to interfere with the above territories.'

In addition, Article IV provided:

> 'Bin Saud hereby undertakes that he will absolutely not cede, sell, mortgage, lease, or otherwise dispose of the above territories or any part of them, or grant concessions within those territories to any Foreign Power, without the consent of the British Government.'

On closer analysis, there is no conflict between the 1914 Anglo-Turkish Convention and the 1915 Anglo-Saudi Treaty. Firstly, the clear delimitation in the 1914 Convention indicated that the treaty concerned the boundary or title which supports its opposability to Ibn Saud as successor to the Ottomans. Furthermore, the 1915 Treaty did not purport to deny the delimitation of the 1914 Convention. In this context, Shaw's comments are important: [86]

> '...the predecessor State may transfer to the successor State only the territorial extent of its own competence. O'Connell notes that 'since a State can acquire from another only so much territory as that other possessed, the latter's boundary treaties with neighbouring States delimit the extent of the territory absorbed.' However, this is linked with the territorial theory, for 'if a boundary treaty merely defines a frontier then it is instantly executed, and what is inherited is not the treaty but the territorial extent of sovereignty.' The International Law Association adopted a series of eight resolutions on State succession to treaties in 1968, and the final one provided that 'when a treaty which provides for the delimitation of a national boundary between two States has been executed in the sense that

[86] Shaw, *Title to Territory in Africa,* pp. 234-235

> the boundary has been delimited and no further action needs to be taken, the treaty has spent its force and what is succeeded to is not the treaty but the extent of national territory so delimited'. Where, however, a boundary treaty provided for future action to delimit it, or provides for future reciprocal rights in relation to the boundary, it is considered that the question whether the treaty is or is not succeeded to should be governed by the general presumptions of continuity envisaged by it for all treaties of the predecessor State. Thus, in a sense, one is not considering a question of succession to boundary treaties, but rather succession to the existing and delimited territorial dimensions of the predecessor State.'

In this context, it is suggested that the 1914 Anglo-Turkish Convention falls into the first category of treaties, in that it was instantly executed. In contrast, the 1915 Anglo-Saudi Treaty did not delimit a boundary but simply provided for future discussions on title to territory and these discussions could have taken place within the framework of the 1914 delimitation.

It is worth mentioning that the ICJ Judgment of 2001 in the *Qatar/Bahrain Case* relied, *inter alia*, on the 1913 Anglo-Turkish Convention in deciding title to Zubarah in favour of Qatar although this Convention was, unlike the 1914 Convention, not ratified. The Blue line set out in the 1913 Convention separated the Saudi eastern region of Hasa (formerly under Ottoman sovereignty) from Qatar. The ICJ applied the 1913 Anglo-Turkish Convention because it reflected the accurate intention of the parties and their view on the boundary issue at the time of the conclusion of the treaty:[87]

> '88. Both Parties agree that the 1913 Anglo-Ottoman Convention was never ratified...; they differ on the other hand as to its value as evidence of Qatar's sovereignty over the peninsula.
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> 89. The Court observes that signed but unratified treaties may constitute an accurate expression of the understanding of the parties at the time of signature. In the circumstances of this case the Court has come to the conclusion that the Anglo-Ottoman Convention does

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[87] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar/Bahrain)* (2001) ICJ Reports. The Court added: '95. In view of the foregoing, the Court cannot accept Bahrain's contention that Great Britain had always regarded Zubarah as belonging to Bahrain. The terms of the 1868 agreement between the British Government and the Sheikh of Bahrain, of the 1913 and 1914 conventions and of the letters in 1937 from the British Political Resident to the Secretary of State for India, and from the Secretary of State to the Political Resident, all show otherwise. In effect, in 1937 the British Government did not consider that Bahrain had sovereignty over Zubarah; it is for this reason that it refused to provide Bahrain with the assistance which it requested on the basis of the agreements in force between the two countries.

96. In the period after 1868, the authority of the Sheikh of Qatar over the territory of Zubarah was gradually consolidated; it was acknowledged in the 1913 Anglo-Ottoman Convention and was definitively established in 1937. The actions of the Sheikh of Qatar in Zubarah that year were an exercise of his authority on his territory and, contrary to what Bahrain has alleged, were not an unlawful use of force against Bahrain.

97. For all these reasons, the Court concludes that the first submission made by Bahrain cannot be upheld, and that Qatar has sovereignty over Zubarah.'

represent evidence of the views of Great Britain and the Ottoman Empire as to the factual extent of the authority of the Al-Thani Ruler in Qatar up to 1913.

90. The text of Article 11 of the Anglo-Ottoman Convention is clear: "it is agreed between the two Governments that the said peninsula will, as in the past, be governed by the Sheikh Jasim-bin-Sani and his successors". Thus Great Britain and the Ottoman Empire did not recognize Bahrain's sovereignty over the peninsula, including Zubarah. In their opinion the whole Qatar peninsula would continue to be governed by Sheikh Jassim Al-Thani, who had formerly been nominated *kaimakam* by the Ottomans, and by his successors.

91. The Court also observes that Article 11 of the 1913 Convention is referred to by Article III of the Anglo-Ottoman treaty of 9 March 1914, duly ratified that same year (see paragraph 46 above). That Article III defined the boundary of the Ottoman territories by reference to "the direct, straight line in a southerly direction . . . separating the Ottoman territory of the *sanjak* of Nejd from the territory of Al-Qatar, in accordance with Article 11 of the Anglo-Ottoman Convention of 29 July 1913 relating to the Persian Gulf and the surrounding territories". The parties therefore did not contemplate any authority over the peninsula other than that of Qatar.'

By analogy, the Violet line indicated in the 1914 Convention could reflect the accurate intention of the contracting parties on the territorial sovereignty of Najd, Hasa and the Rub' Al-Khali Desert both at the time when these territories were under the sovereignty of the Ottomans, albeit directed by Ibn Saud according to the 1914 Turkish-Saudi Treaty, as well as during the First World War when Najd and Hasa came under Ibn Saud's exclusive local power which was later recognized by the 1915 Anglo-Saudi Treaty.

On the claim that Saudi Arabia was unaware of the conclusion of the 1914 Convention, two further points deserve attention. Firstly, it is noted that in 1914, there was no international body in charge of registering international documents, which meant that Saudi Arabia had fewer chances to discover the document. Nevertheless, Saudi Arabia would remain bound by the 1914 Convention, as a successor state to the Ottomans. Secondly, the British representative, Ryan, insisted that the Saudi negotiators were aware of the 1913 Convention when they concluded the *Koweit [Kuwait] –Nejd [Saudi Arabia] Boundary Convention* of 1922.[88]

More importantly, as long as a boundary treaty was validly concluded and ratified it devolves to the successor state by virtue of the boundary line showing the size of territory the new state inherited from her predecessor state, as explained above. New states have no power to reject succession nor must they express consent before succession occurs. There is no precedent that indicates that a new state is waived from responsibility as to boundary treaties if she was unaware of it.

[88] See above; See also (IOR) Document R/15/1/603 Confidential Report no. [E 4734/279/91] dated 3rd August 1934, p.4.

(f) The power of the Ottoman Empire to conclude the 1914 Convention

Saudi Arabia finally claimed that the conclusion of the 1914 Convention with the Ottomans was illegal and in violation of the *status quo* in Najd and Hasa where Ibn Saud managed to obtain control of these territories from the Ottomans by 1912.[89]

It is known that Ibn Saud concluded with the Ottomans the Saudi-Turkish Treaty[90] more than two months after the conclusion of the 1914 Anglo-Turkish Convention. The Saudi-Turkish Treaty cannot be called an international treaty because it was not concluded by two sovereign states. Indeed, it is best considered as organising a domestic arrangement between the sovereign central government in the Ottoman capital via her governor in the Ottoman Vilayet of Basra, south of Iraq, and its Ottoman governor, Ibn Saud, ruling the Ottoman Vilayet of Najd.[91] It is true that Ibn Saud successfully managed to acquire governance in 1902 in Riyadh, capital of Najd and he gradually expanded his territories inside Arabia. In 1912 Ibn Saud's troops invaded Hasa and took control of the area from the Ottomans who had no choice except recognizing Ibn Saud's local authority. However, the 1914 Saudi-Turkish Treaty stressed that Ibn Saud was under Ottoman sovereignty and no provisions in the treaty suggested that the Ottomans were under an obligation not to delimit the boundary of the Vilayet of Najd nor to seek any permission from Ibn Saud if they wished to do so. Article 2 provided that the parties agreed that Ibn Saud would remain in charge of the Ottoman Vilayet of Najd and he would be succeeded by his sons and grandsons as long as they showed loyalty to the Ottoman Emperor and the successor ruler shall be appointed by the Ottoman Imperial Firman 'Royal Decree'. Other provisions of the treaty make reference to Turkey's continuing powers. Article 3 provided:

> 'A Technical Military Official shall be appointed by the said Wali and Commandant to live wherever he wishes: if he sees fit and necessary he may introduce Turkish officers for the fundamental technical training of Local Troops, and their number shall depend upon the choice and wishes of the said Wali and Commandant.

Furthermore, Article 5 stated that:

> 'All the business of the Customs, Taxes, Ports and Light houses shall be exercised subject to the international rights of Governments, and shall be conducted according to the principles of the Turkish Government under the direction of the said Wali [Vali] and Commandant.'

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[89] See chapter 1.
[90] See Appendix 1.3.
[91] See chapter 1.

Article 7 provided that the Ottoman flags would be hoisted on official Ottoman buildings and boats of the Vilayet of Najd. Article 9 prohibited the Wali and Commandant of Najd from establishing any foreign affairs or receiving foreign contacts. According to Article 10, all his correspondence would be directly handled by the Imperial Ministries of Interior and Marine, without intermediary. Article 11 organized Ottoman postal serves inside Najd, while Article 12 explained the Wali of Najd's military duties during Ottoman wars with other nations:

> 'If, God forbid, the Government should have to fight with a foreign power or if there should be any internal disturbance in any Wilayet and the Government asks the said Wali for a force to co-operate with its own forces it is incumbent on the Wali to prepare a sufficient force with provisions and ammunition, and to respond to the demand at once, according to his power and ability.'[92]

The terms of the Saudi-Turkish Treaty of 1914 are to some extent similar to the 1911 Da'an Agreement signed by the Ottomans and Imam Yahya in 1911, granting the Imam a local authority over the Zaidi population with limitations on various powers including some decisions requiring the ratification of the central Ottoman authorities.[93] The Award in the *Eritrea - Yemen Arbitration* regarding the Hanish Island explained the nature of the Da'an agreement as follows:[94]

> '146. The so-called Treaty of Da'an of 1911 was in fact an internal instrument by which the Imam of Yemen obtained for himself greater internal powers of autonomy within the Ottoman Empire. However, sovereignty over all the Ottoman possessions, including the islands in dispute, remained vested in the Empire itself until it was legally divested of its Arabian possessions after the First World War.'

Moreover, the Treaty of Peace at Sèvres signed on the 10th August 1920 by Turkey on the one hand, and Principal Allied Powers (forming together with Armenia, Belgium, Greece, the Hedjaz [or Hijaz located in the west of Arabia Peninsula], Poland, Portugal, Roumania, the Serb-Croat-Slovene State and Czechoslovakia the "Allied Powers") on the other, although not ratified, provided that Turkey would renounce all its title to lands:[95]

> 'Outside her frontiers as fixed by the present Treaty Turkey hereby renounces in favour of the Principal Allied Powers all rights and title which she could claim on any ground over or concerning any territories outside Europe which are not otherwise disposed of by the present Treaty. Turkey undertakes to recognize and conform to the measures which may be taken now or in the future by the Principal Allied Powers, in agreement where necessary with third Powers, in order to carry the above stipulation into effect.'

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[92] Signed by Abdul Aziz (Ibn Saud), Wali of Najd Wilaeyt and Commandant of its Army, Suleiman Shafik Bin Ali Kamali, Wali of Basrah Wilayet and Commandant of its Forces.

[93] See chapter 1.

[94] See full text of the Award at the website of *Permanent Court of Arbitration* at http://www.pca-cpa.org/ENGLISH/RPC/EY/ch1ER-YE.htm (last visited on 19th October 2005).

[95] Ibid., Article 132 indicated in para 149 of the Eritrea-Yemen Arbitration, see http://www.pca-cpa.org/ENGLISH/RPC/EY/ch5ER-YE.htm.

The signature of the Treaty of Peace at Sèvres[96] supports the conclusion that the Ottoman Empire had exercised sovereignty in Najd, Hasa, `Asir, and northern Yemen and had the capacity to conclude the 1914 Anglo-Turkish Convention.

The 1914 Saudi-Ottoman Treaty makes it very hard for Saudi Arabia to prove its claim that the Ottomans had no sovereignty over Hasa and Najd when they concluded the 1913-14 Anglo-Turkish Conventions. It could be understood that Saudi Arabia justified its claim based on the *de facto* situation in Hasa and Najd which had arisen under Ibn Saud's effective control when Turkey signed the two Conventions with Britain. But Ibn Saud's acceptance to be a wali, local governor, under the Ottoman Empire proved that he accepted Ottoman *de jure* sovereignty over the area. Thus, the Saudi stance that the 1914 Anglo-Turkish Convention was invalid due to alleged Ottoman lack of authority or sovereignty over Najd at the time of the conclusions of the 1914 Anglo-Turkish Convention cannot be supported by international law.

(g) The 1995 Memorandum of Understanding [97] and succession to the 1914 Convention

Article 3 of the 1995 Memorandum of Understanding (MOU) between Saudi Arabia and Yemen provides:

> 'The current committee formed by both parties will continue in its tasks by specifying as necessary procedures and moves that will lead to the demarcation of the rest of the boundary, beginning [in the west] at Jabal al-Thar until the end of the two countries [in the east]: these should include agreement on the method of arbitration in case of disagreement between the two countries;'

The 1995 MOU did not mention the 1914 Anglo-Turkish Convention as a basis for negotiations, as it did with the 1934 Treaty of Taif. Does this prevent Yemen from relying on the 1914 Anglo-Turkish Convention in case of arbitration? The answer is probably negative because MOUs usually are not legally binding although they play a role in promoting mutual understanding. Aust explains:[98]

> ' ...lawyers practising in foreign or other ministries deliberately utilise instruments which employ carefully chosen terminology to indicate that, rather than creating international legal rights and obligations, the intention of the participants is to record no more than mutual *understandings* as to how they will conduct themselves. The existence of such instruments, and the extent to which they are a significant vehicle for the conduct of business between states, is not well known outside government circles.
>
> Such instruments have been variously described as 'gentlemen's agreements', 'non-binding agreements' and 'non-legal agreements'. These non-legally binding instruments are most

[96] Full text of the treaty is available at http://www.lib.byu.edu/~rdh/wwi/versa/sevres1.html.
[97] See Appendix 1.13.
[98] Aust, *Modern Treaty Law and Practice,* pp. 17-18, pp. 20-21, and pp. 26-46.

> commonly referred to by the initials 'MOU'. This is short for 'Memorandum of Understanding', since this is the name most often given to them.'

Therefore it is unlikely that the conclusion of the 1995 MOU and the failure to mention the 1914 Convention will affect Yemen's claims based on the 1914 Convention or prevent it from relying on those claims in any arbitration.[99]

3. The 1934 Treaty of Taif

(a) Arguments relating to the Treaty of Taif

Various official, private and scholarly sources reveal that Yemen, despite the fact it was an original party to the Treaty of Taif in which it recognised Saudi sovereignty over `Asir, Jizan and Najran, resumed its former title claims to the three disputed territories, calling them 'lost or stolen provinces'.[100] The Yemeni claims emerged a few years after the controversial Saudi-Yemeni joint communiqué of 1973, announcing the two states' decision to extend the operation of the Treaty of Taif in perpetuity, instead of on a 20-lunar year basis.

Yemen was reported to argue that she was not bound by the Treaty of Taif and therefore a new treaty was needed for the boundary between the states and that the desired treaty must respect Yemen's territorial claims to `Asir, Jizan and Najran. Amongst other arguments, Yemen asserted that the Treaty of Taif was not binding because it was signed after Saudi Arabia defeated Yemen in the pre-Treaty of Taif War and Saudi Arabia had therefore forced Yemen to sign the treaty following an alleged aggressive war and coercion.

Yemen also argued that the operation of the Treaty of Taif had come to an end due to Article 22 which called for a renewal every 20-lunar year term if both states agreed. Yemen did not want to renew it and considered it terminated.

In addition, Yemen was reported to suggest that the terms of the Treaty of Taif did not constitute a boundary treaty, but rather a lease agreement valid for 20-lunar years, subject to renewal if the two parties so wished. Following this argument, Yemen as a party to the Treaty did not want to renew it and therefore the territories of `Asir, Jizan and Najran should be returned to Yemen.

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[99] Ibid., p. 46.
[100] See chapters 1 and 2.

In turn, Saudi Arabia was of the opinion that title to `Asir, Jizan and Najran was settled conclusively according to the terms of the Treaty of Taif, given the provisions of Articles 2 and 4 supported by the Saudi-Yemeni communiqué of 1973 whereby the two states decided to adhere to the treaty in perpetuity, cancelling the operation of Article 22 requiring a renewal every 20-lunar years.

The following sections will consider these arguments in turn.

(b) Validity of the conclusion of the 1934 Treaty

As explained by Shaw in the following extract, states enjoy full freedom in the way they choose to conclude their treaties:[101]

> 'Treaties may be made or concluded by the parties in virtually any manner they wish. There is no prescribed form or procedure, and how a treaty is formulated and by whom it is actually signed will depend upon the intention and agreement of the states concerned.'

Thus, it is observed that Saudi Arabia and Yemen decided to conclude the Treaty of Taif in accordance with the following conditions: signature by plenipotentiaries possessing full powers on behalf of the two states and ratifications by the two monarchs. These conditions were similar to those applicable in 1914 Anglo-Turkish Convention[102], although ratification of the Treaty of Taif was required only by the terms of the agreement, rather than by the internal constitutional requirements of either state. All the conditions were fulfilled by the parties. Firstly, full powers were exchanged by the plenipotentiaries; Prince Khalid, son of King Abdul Aziz, on behalf of Saudi Arabia, and Sayyed Abdullah Al-Wazir, on behalf of Imam Yahya, as the Preamble of the Treaty of Taif provided.[103] Then, the Treaty of Taif was signed by both plenipotentiaries on 6 Safar 1353 [corresponding to the 19th May 1934][104]. While King Abdul Aziz ratified the Treaty on the 12th June 1934 in Makkah, Imam Yahya did so on the 26th June 1934 in San'a.[105] In the Yemeni city of Hudiadah, the two states' representatives exchanged documents of ratification on the same date and the Treaty thereby entered into force. The ratification fulfilled the conditions set out in Article 22 of the Treaty which provided its entry into force and which required that the Treaty be renewed after every 20-lunar years. It was first renewed in 1953. Subsequently, in 1973 the two states issued a joint communiqué signed by Yemen Prime Minister, Al-Hajri, and Prince Sultan,

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[101] Shaw, *International Law* (2003) p. 815.
[102] See above.
[103] Full text in Appendix 1.12.
[104] Arabic Text of Article 23 provided date of signature and names of plenipotentiaries; see Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934)* (1987) p. 319.
[105] Ibid., p. 254.

Saudi Minister of Defence on behalf of Saudi Arabia.[106] As will be seen below, the communiqué arguably extended the Treaty operation in perpetuity.

Therefore, it is safe to conclude that the 1934 Treaty of Taif was a treaty, legally binding on both states, having fulfilled the conditions set by international law and those terms of validity set forth in the Treaty itself.

(c) Nature of the Treaty: boundary, political and peace treaties

Al-Enazy called the Treaty of Taif an 'unusual instrument' due to its mixed nature: partly 'boundary' or 'dispositive' and partly 'political' nature with emphasis on the 'peace' it established, indicating cessation of the Saudi-Yemeni war:[107]

> 'The Treaty of Taif is a rather unusual instrument in the annals of modern legal history in that it serves both as a peace/boundary agreement and as a general agreement regulating various aspects of Saudi-Yemeni relations, including political, military, economic, and social matters. On the one hand, it aims to be a timeless treaty that creates future rights and binding obligations involving cessation of an existing state of war (Preamble and Article 1), cession of territory (Article 2), and establishment of a boundary line (Article 4). On the other hand, it contains a clause limiting its legal force to a fixed duration period of "twenty complete lunar years" from the date of ratification.'

Al-Enazy's comment on the nature of the Treaty of Taif is further confirmed by the preamble which set out the various goals of the Treaty, including the creation of peace, the establishment of a boundary, the settlement of title claims, as well as providing the basis for mutual and permanent brotherhood and co-operation.[108] Once the two states signed the Treaty on the 19th May 1934, a cessation of war was declared and permanent peace was established by virtue of Article 1 of the Treaty which says:

> 'The state of war existing between the Kingdom of the Yemen and the Kingdom of Saudi Arabia shall be terminated as from the moment of signature of this treaty, and there shall forthwith be established between Their Majesties the Kings and their countries and peoples a state of perpetual peace…'

In furtherance of the goal of permanent peace, Article 5 prohibited both states from building any fortifications within 5 km of the agreed boundary line as set out in Article 4.

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[106] See below.

[107] Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on 12th 12, 2000', (2002) *American Journal of International Law*, vol. 96, p. 172. Other resources provided date of signature as 20th May 1934, such as:
http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/about%20yemen/agreements/The%20Treaty/Taif.htm. This could be due to a difference in converting Hijri lunar calendar date to the Gregorian date.

[108] See the text of the Preamble in Appendix 1.12.

Furthermore, Article 9 called on both states not to provide a safe haven to insurgents or other antagonists.

The title/boundary nature of the Treaty was evident in Articles 2 and 4. In Article 2, the two states agreed to drop title claims they had made before the war.[109] In addition, a fixed boundary was agreed in Article 4. It is observed that both monarchs recognised the independence of the other state and the territory thereof. Thus, it is suggested that Articles 2 and 4 are boundary/territorial provisions which enjoy a 'dispositive' nature which, as explained above in relation to the 1914 Convention[110], are not dependent on the continuity of the rest of treaty's provisions.

Articles of a 'political' nature covering various provisions on mutual co-operation were also included in the Treaty, for instance, Article 19 on increasing trade and communications and Article 17 on neutrality in case of war. Article 10 placed both states under the obligation to return fugitives who caused problems to the other state, for example the revolutionist Idrisi family members who after ceding their territory to Saudi Arabia under the 1926 Treaty of Makkah, launched an unsuccessful attempt to gain independence from the Saudis by attacking Jizan and `Asir from Yemeni territory.[111]

In fact, the Treaty of Taif included some provisions similar to other peace treaties, for instance the Treaty of Paris signed on the 30th May 1814, between France and the coalition of Russia, Prussia, the United Kingdom, Sweden, and Austria, ending the war between France and the Coalition and forcing the abdication of Napoleon I. Under the treaty, French boundaries were returned to those of 1792 and the Seychelles Islands were ceded to the United Kingdom.[112] Furthermore, the Treaty of Lausanne, concluded by Turkey and Allied Powers and signed on the 24th July 1923, was a peace treaty which included delimitation of boundaries and renunciation of Turkish's title to territories outside Turkey.[113]

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[109] See chapter 2. The text of Articles 2 and 4 is produced in Appendix 1.12.
[110] See above.
[111] See chapter 1 for a history of the disputed territories.
[112] See http://en.wikipedia.org/wiki/Treaty_of_Paris_%281814%29 (last visited on 26th October 2005).
[113] It is written that 'It superseded the stillborn Treaty of Sèvres which was considered "unacceptable" by the newly founded Turkish government replacing the monarchy in Istanbul. After the expulsion of the Greek forces by the Turkish army under the command of Kemal Atatürk, there was a need to extensively revise the Treaty of Sèvres. On October 20th, 1922 the peace conference was opened, and after strenuous debates, it was interrupted on February 4th, 1923. After reopening on April 23rd, the treaty was signed on July 24th after a total of 8 months of long and arduous discussions.' See http://en.wikipedia.org/wiki/Treaty_of_Lausanne.

In a nutshell, the Treaty of Taif contained a combination of 'dispositive' articles and 'political' provisions. The dispositive nature of certain articles, viz. Articles 2 and 4, gives them a certain immunity from termination, as shall be examined in more detail below. In addition, it could also be classified as a 'peace' treaty, enjoying a special status under international law, as shall be explained in the following section.

(d) Coercion[114] and the related concepts of 'peace treaties' and 'self-defence'

In 1998, El-Rayyes reported that the President of Yemen, Ali Abdullah Salih, told him that Yemen accepted the Treaty of Taif because she could not continue the war with Saudi Arabia who had invaded Yemen.[115] In 1999, Al-Wajih, advocating the Yemeni view, explained:[116]

> '...Yemen was coerced by force resulting from the occupation of large parts of its territory, as well as the possibility of further occupation. After the Imam had declared that he was under pressure and had accepted the Saudi demands as the Saudi forces reached the main Yemeni seaport, Ibn Saud specified a time limit within which the Saudi demands were to be met, and he declared that his army would be put on stand-by to resume fighting should the demands indicated in the agreement (Treaty of Taif) not be performed.'

Based on these facts, Al-Wajih concluded that Article 4 of the Treaty of Taif which fixed the boundary was void:[117]

> 'In light of material facts and according to international law principles, the boundary indicated in Article 4 of the Treaty of Taif is considered void because it was imposed by coercion.'

Al-Wajih also suggested the nullity of Article 2 recording a mutual waiver of title claims by both states:[118]

> 'The waiver mentioned in Article 2 is considered void due to the absence of consent which is a substantial condition to different agreements. Accordingly, Saudi sovereignty to `Asir is still a *de facto* status without any legal justification, and the Yemeni state is the owner of legal title to `Asir'.

Al-Wajih justified his argument on the grounds that, after the First World War, the international community prohibited the use of force as a means of dispute settlement:[119]

> 'Since the international community, in the aftermath of WW1, changed its view of war, rejecting it as a means to achieve national policies in international relations, and believing that winning wars does not create law, and that peace is made by law but not war, for the

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[114] See the section on conquest in chapter 4.
[115] El-Rayyes, *Southern Wind: Yemen and Its Role in Arabia (1990-1997)* (1998) p. 140.
[116] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under Intenational Law Rules and in Light of British Role Based on Published Documents (In Arabic)* (1999) p. 247.
[117] Ibid., p. 248.
[118] Ibid., p. 251.
[119] Ibid., p. 248, citing Ibrahim, *Coercion in International Treaties,* p. 16.

> benefit of all peoples, the international community started to abstain from negotiating methods based of pressure and coercion in concluding international treaties, and moreover, considered treaties concluded through violence and the threat of force, as void *ab initio*.'

He cited a recommendation from the League of Nations in 1932:[120]

> 'The League of Nations confirmed in a recommendation issued on the occasion of the problem of Manchuria in 1932 that any status or treaty or agreement in violation of provisions of the League of Nations and Paris Covenant is considered void.'

In a nutshell, the Yemeni argument is based on alleged Saudi coercion against Yemen during the war which was ended by the 1934 Treaty of Taif.

Various authoritative sources have discussed the impact of coercion and war on international treaties, taking into consideration the changing legal status of the use of force and coercion in international relations and dispute settlement. Before the First World War, coercion was a lawful act. However, attitudes changed and the use of force was gradually outlawed, as can be observed in the League of Nations' Covenant (Articles 10[121], 11[122] and 12[123]) and then the Kellogg-Briand Pact[124] and Article 2(4) of the UN Charter. Shaw explains this gradual prohibition of war and coercion:[125]

> 'Prior to the League of Nations, it was clear that international law did not provide for invalidation of treaties on the grounds of the use or threat of force by one party against the other and this was a consequence of the lack of rules in customary law prohibiting recourse to war. With the signing of the Covenant of the League in 1919, and the Kellogg-Briand Pact in 1928 forbidding the resort to war to resolve international disputes, a new approach began to be taken with regard to the illegality of the use of force in international relations. With the elucidation of the Nuremberg principles and the coming into effect of the Charter

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[120] Ibid., p. 249. The recommendation read: 'It is incumbent upon the member of the League of Nations not to recognise any situation, treaty, or agreement which my [may] be brought about by means contrary of the League of Nations or to the Pact of Paris.'

[121] Article 10 reads 'The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.'

[122] Article 11 reads 'Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council...'

[123] Article 12 reads 'The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.'

[124] It is written that '[The Pact] was signed in Paris on August 27th, 1928 by eleven states: Australia, Canada, Czechoslovakia, Germany, India, the Irish Free State, Italy, New Zealand, South Africa, the United Kingdom, and the United States. Four states added their support before it was proclaimed—Poland, Belgium, and France (in March), and Japan (in April). It was proclaimed to go into effect on July 24, 1929. Sixty-two nations ultimately signed the Pact...'; see http://en.wikipedia.org/wiki/Kellogg-Briand_Pact (last visited 24th October 2005).

[125] Shaw, *International Law*, p. 848.

> of the United Nations after the Second World War, it became clear that international law condemned coercive activities by states.'

In addition, Articles 52 and 69 of the Vienna Convention on the Law of Treaties deal with the impact of coercion on the validity of treaties. Article 52 provides:

> 'A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.'

Article 69 further says:

> '1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.'

These two articles were proposed by the International Law Commission (ILC) which recommended the invalidity of treaties produced by coercion following the gradual prohibition on the use of force and coercion between 1919 and 1945.[126] In its report the ILC emphasized the legality of use of force and coercion before the League of Nations:[127]

> 'Traditional doctrine prior the Covenant of the League of Nations was that the validity of a treaty was not affected by the fact that it had been brought by the threat of use of force. However, this doctrine was simply a reflection of the general attitude of international law during era towards the legality of the use of force for the settlement of international disputes. With the Covenant and the pact of Paris [Kellogg-Briand Pact] there began to develop a strong body of opinion which held that such treaties should no longer be recognised as legally valid. The endorsement of the criminality of aggressive war in the Charters of Allied Military Tribunals for the trial of the Axis war criminals, the clear-cut prohibition of the threat or use of force in Article 2(4) of the Charter of the United Nations, together with the practice of the United Nations itself, have reinforced and consolidated this development in international law. The Commission considers that these developments justify the conclusion that the invalidity of a treaty procured by illegal threat or use of force is a principle which is *lex lata* in international law today. ...The Commission further considered that a treaty procured by a threat or use of force in violation of the principles of the Charter must be characterised as void, rather than as voidable at the instance of injured party.'

Although the above-mentioned provisions may suggest that Al-Wajih's coercion argument was well-founded, there are important exceptions which would not allow the coercion argument. Most importantly, international law differentiated between a state which was a victim of aggression and a state which was an aggressor. To illustrate this point, the Committee of Harvard Research in International Law in connection with its draft Convention on the Law of Treaties included the following observations:[128]

> 'Writers on international law appear to be unanimous in the opinion that, with the possible exception of treaties of peace which are often imposed by a victorious belligerent upon a state which has been become defeated in war, freedom of consent by the parties is an essential condition of the validity of a treaty ...

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[126] *Yearbook of the International Law Commission* (1966) vol. 2, pp. 246-247.
[127] Ibid.
[128] Committee of Harvard Research in International Law, in (1935) *American Journal of International Law Supp.*, vol. 29, p. 1149 and pp. 1150-1151.

> Vattal likewise recognised that treaties of peace constituted an exception to the general rule of freedom of consent. Nevertheless Vattel admitted that it was possible to conceive of treaties of peace so unjust and oppressive that the plea of constraint would be justified...'

Vattel suggested the exception of peace treaties for the sake of common safety and the welfare of nations. He wrote:[129]

> 'A sovereign cannot dispense himself from observing a treaty of peace by alleging that it was extorted from him by fear or by constraint. In the first place, if this plea were admitted it would make it impossible for any reliance to be put upon treaties of peace; for there are few such treaties against which that plea could not be brought as a cover for bad faith. To autorise such an evasion would amount to an attack upon the common safety and welfate of nations.'

According to this view, a state cannot claim coercion if the treaty was a peace treaty imposed on it as a result of its own aggression. Aust explains further the status of peace treaties in light of the UN Charter and the Vienna Convention 1969:[130]

> 'It might seem as if a peace treaty must involve some degree of coercion of the vanquished by the victor. Nowadays a peace treaty forced on a state which has been the victim of aggression would be void. But the Vienna Convention provides expressly that its provisions are without prejudice to any obligation in relation to a treaty which may arise for an aggressor state in consequence of measure taken in conformity with the UN Charter with reference to the state's aggression.'

This is supported by Oppenheim, who asserts that an aggressor who was defeated in war cannot claim coercion as grounds to invalidate a treaty which was concluded during or after the war started by the aggressor himself:[131]

> 'While a peace treaty would be void if procured by an aggressor state's coercion of a victim, a peace treaty concluded by a defeated aggressor state as a result of military victory by a victorious would-be victim (particularly in the case of lawful collective action against the aggressor) is valid. Article 75 of the Vienna Convention provides that the provisions of the Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor state in consequence of measures taken in conformity with the Charter of the United Nations with reference to that state's aggression.'

Shaw agrees with Oppenheim's stance that a treaty concluded after war in favour of a state who was acting in self-defence does not give an excuse to a defeated aggressor state to seek to avoid it on the ground of coercion of consent:[132]

> '...force will be legitimate when exercised in self-defence. Whatever, the circumstances, it is not the success of use of violence that in international law constituted the valid method of acquiring territory. Under the classical rules, formal annexation of territory following upon an act of conquest would operate to pass title. It was a legal fiction employed to mask the conquest and transform it into a valid method of obtaining land under international law. However, it is doubtful whether an annexation proclaimed while it was still in progress would have operated to pass a good title to territory. Only after a war is concluded could the juridical status of the disputed territory be finally determined. This follows from the rule that has developed to the effect that the control over the relevant territory by the state

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[129] Cited by ibid.
[130] Aust, *Modern Treaty Law and Practice,* p. 257.
[131] Jennings and Watts, *Oppenheim's International Law,* p. 1292.
[132] Shaw, *International Law,* pp. 341-342.

> purporting to annex must be effective and that there must be no reasonable chance of the former sovereign regaining the land. Acquisition of territory following an armed conflict would require further action of an international nature in addition to domestic legislation to annex. Such further necessary action would be in the form either of a treaty of cession by the former sovereign or international recognition.'

Shaw also noticed the inclusion of boundary/title provisions in peace treaties:[133]

> 'Cession thus involves the peaceful transfer of territory from one sovereign to another ... and has often taken place within the framework of a peace treaty following a war.'

It is noted that impartial information on the Saudi-Yemeni war and the way it was launched suggests that it was in fact Yemen who started the war when Yemeni troops invaded Najran.[134] It was also reported that when Yemeni troops invaded Najran, its population, the Yam tribe, were associated with Saudi Arabia.[135] Al-Khatrash, a Kuwaiti historian, also suggested that Yemen initiated the aggression in order to impose her view on title to the territories:[136]

> 'Indeed, it was Imam Yahya who ignited the conflict in hope that he might gain some or all of Asir after the Idrisis family suffered a division. However, this resulted in an opposite outcome as he gave King Abdul Aziz Al Saud the chance to totally annex Asir to his dominions.'

Moreover, official records, translated in chapter 2 and provided also in the Green Book on Saudi-Yemeni negotiations before and during the war, confirmed that title to Najran was under discussion. In addition, official Saudi-Yemeni cables disclosed that the Yemeni troops invaded Najran and Imam Yahya refused to withdraw his forces from Najran.[137] Moreover, several historians have suggested that Yemen provided a safe haven to the Idrisi family members who, with Yemeni support, attacked Saudi tribes in `Asir and Jizan.[138] Therefore, under the Treaty of Taif, Yemen extradited the 300-members of the Idrisi family to Saudi Arabia[139] and Yemen withdrew its troops from Najran while the Saudi troops withdrew from the Yemeni city of Hudaidah and other areas south of Jizan. In other words, Yemen got back their lands while giving up Najran to Saudi Arabia.[140]

Moreover, it was noted that the lands to which Imam Yahya was making claim had been ruled by Al-Aid and the Idrisi only before the Saudi-Yemeni dispute emerged and later developed into the war. In other words, these lands had not been under Yemeni

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[133] Ibid., pp. 339-340.
[134] See chapters 1 and 2.
[135] Al-Zulfah, *Asir During the Reign of King Abdul Aziz: Its Political, Economical and Military Role in Building the Modern Saudi State* (1995); see also chapter 2.
[136] Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934),* p. 293.
[137] See chapter 2.
[138] See sources in chapter 1.
[139] Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934).*
[140] Ibid.

sovereignty.[141] Consequently, it could not be said that there was a Saudi conquest of Yemeni lands which was imposed by the Treaty of Taif due to alleged coercion associated by use of force.

In addition, the Treaty of Taif's Preamble and Article 1, as explained above, indicated that the treaty was a peace treaty which enjoyed the exception to invalidity based on coercion.

Moreover, it was reported that at least one Arab King, Faisal I and his son Ghazi,[142] tried to help the two states to settle the issue. In addition, two Arab and Islamic delegations participated in the efforts leading to the conclusion of the Treaty and its ratification. The first delegation was sent by the Islamic Conference in Jerusalem who went to Saudi Arabia and observed all the negotiations between Imam Yahya's representatives and Ibn Saud's representatives until the Treaty of Taif was concluded:[143]

> 'On April 16, 1934 the delegation left to Hijaz [Saudi Arabia] and was received by the Saudi Government who showed all documents, negotiations and exchanged letters regarding the dispute... the delegation embarked on examining these documents and kept in permanent contact with the two concerned parties until signature of the peace treaty was completed in the name of the Treaty of Taif, which ended the state of war'.

The second delegation consisted of chairman Amen Al-Husiani, and members Hashem Al-Attasi from Syria, Mohammed Allobah from Egypt, and Prince Shakeeb Arslan from Lebanon.[144] The involvement of an impartial third party could be argued to provide a guarantee that neither Saudi Arabia nor Yemen was subjected to unfair provisions or coercion.

In sum, the Yemeni coercion argument is not persuasive on several grounds. Notwithstanding the doctrine of inter-temporal law doctrine, which suggests that conquest was at that time a lawful means of title acquisition, there were also certain exceptions to the prohibition on the use of force including peace treaties and self-defence, which Saudi Arabia would have been able to invoke. Furthermore, the facts do not actually suggest that any conquest took place.

(e) The termination argument and Article 22 of the Treaty of Taif

Article 22 of the Treaty of Taif provided:

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[141] See the section on conquest in chapter 4.
[142] Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934)*, pp. 267-268. See also PRO document FO no. 25 406/71 (E 4970/759/25) dated 24th August 1933, Jeddah.
[143] Al-Khatrash, *History of Saudi-Yemeni Relations (1926-1934)*, p. 271-279
[144] Ibid., pp. 275-276

> '... It may be renewed or modified during the six months preceding its expiry. If not renewed or modified by that date, it shall remain in force until 6 months after such time as one party has given notice to the other party of his desire to modify it.'

Although it was agreed under the Saudi-Yemeni Joint Communiqué signed on the 17th March 1973[145] that the Treaty of Taif would remain valid permanently replacing the need for renewal, the Yemeni argument of termination of the Treaty of Taif was established on the basis of Article 22 of the Treaty. This reflected Yemen's ambition for a new title/boundary settlement since the 1962 revolution against the Royal government and following the assassination of Mr Al-Hajri who signed the communiqué and also taking into consideration increasing public pressure for the re-acquisition of `Asir, Jizan and Najran after the unification of northern and southern Yemen in 1990. The Royal Yemeni government concluded the Treaty with Saudi Arabia in 1934 and renewed it in 1953 for a 20 lunar year term as provided by Article 22. Schofield writes:[146]

> 'In signing the 1934 Taif treaty and renewing it two decades later, Yemen seemed ostensibly to have dropped its claims to the north-western portions of the "Greater Yemen" of historical tradition. It will be recalled that this had found its most extensive geographical expression during the seventeenth century. However, the recapture of the "lost" territories of Asir, Jizan and Najran would remain a goal of Yemeni nationalist sentiment. This would be driven home to the government of the Yemen Arab Republic (YAR) in no uncertain terms during the early to mid-1970s as the Taif treaty once again came up for renewal. The issue on 17 March 1973 of a rather obscure joint communiqué by the Saudi Foreign Ministry and YAR Prime Minister Abdullah al Hajri, during the latter's tour of Saudi Arabia and the Gulf states, seemingly obliviated the need for renewal of those three articles of the Taif treaty which dealt with territorial definition. The Taif line was described in the joint communiqué as "permanent and final." To link al Hajri's assassination during July 1977 in London primarily to this commitment, characterised by many Yemenis in the intervening period as the "surrender of the lost provinces" is to underplay the complexities of Yemeni politics. Yet the enduring sensitivity of the issue is evidenced by the fact that no Yemeni leader since has ever felt able to confirm or ratify the March 1973 communiqué. Yemeni unification on 22 May 1990 resulted only in more frequent calls from politically-organised groupings, media and public for the newly-constituted republic to resurrect claims to Asir, Najran and Jizan.'

The argument for termination emerged during the negotiations starting in 1992, as El-Rayyes explains:[147]

> 'A joint Saudi-Yemeni committee composed of experts was set up in order to reach a resolution of the [territorial] problem ...The Saudis informed the Yemenis about the necessity of reaching agreement on the demarcation of the boundaries' markers, placed between the two states according to the Treaty of Taif. In other words, Saudi Arabia wanted official recognition from Yemen stating that the current delimitation of the boundaries was final, so that Najran, Jizan, and Asir would remain parts of Saudi Arabia and in a position

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[145] This was signed by Yemeni Prime Minister, Abdullah Al-Hajri, and Saudi Defence Minister, Prince Sultan bin Abdul Aziz on behalf of the Saudi Government. Prince Sultan became a Crown Prince Deputy Prime Minister (in addition to Minister of Defence, Aviation and Inspector General) on the 1st August 2005.

[146] Schofield, 'The International Boundary between Yemen and Saudi Arabia', p. 21.

[147] El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997)*, pp. 139-140.

> which would be vulnerable to neither withdrawal nor abrogation. As to the Yemeni's side, it considered the Treaty of Taif as cancelled as of September 1992, and rejects its renewal.'

It could be inferred from this view that the Yemeni delegation, while rejecting the 1973 Joint Communiqué on permanent operation of the Treaty, considered the communiqué as another term of renewal which ended in September 1992 at the end of 20-lunar years. However, Saudi Arabia insisted on permanent operation of the Treaty of Taif especially Articles 2 and 4 on title/boundary provisions. In addition, Al-Enazy revealed that Yemen considered that the 1973 Communiqué was non-binding:[148]

> 'Saudi Arabia insisted on the validity of the Treaty of Taif and the 1934 boundary line. In a 1973 Saudi-Yemeni joint communiqué, the two states confirmed "anew" the 1934 boundary line as "definite, final, and permanent," as stipulated in the Treaty of Taif and its demarcation report. However, the Yemeni government subsequently dismissed the communiqué as legally non-binding.'

In 1995, the two states signed the Memorandum of Understanding in order to facilitate negotiations which had been halted during the Yemeni civil war of 1994. Yemen and Saudi Arabia declared in Article 1 of the MOU that the Treaty of Taif was 'binding':

> 'Both parties confirm their adherence to the legality and obligatory nature of the Treaty of Ta'if, signed on 6th Safar 1353 AH, corresponding to 30 May 1934 [the correct is 19 or 20 May 1934] and its annexes — henceforth known as "the treaty".'

However, in 1999 Al-Wajih, a Yemeni writer, argued that the treaty was terminated and did not even settle the boundary/title claims:[149]

> 'The treaty did not settle the boundary issue but it suspended this issue because the text dealing with amendment [Article 22] did not indicate any exceptions to any provisions.'

It is noted that when the Treaty of Taif was concluded there were no codified rules of international law governing the interpretation and application of treaties.[150] Nevertheless, the *pacta sunt servanda* doctrine, the permanency of title/boundary provisions and rules of interpretation of treaties were in existence since they stemmed from customary international law. These provisions were thoroughly examined above and shall govern the evaluation of the termination argument.

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[148] Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on 12th 12, 2000', p. 162.

[149] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under Intenational Law Rules and in Light of British Role Based on Published Documents (In Arabic),* p. 233.

[150] Article 4 of the Vienna Convention on the Law of Treaties provides: 'Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.' However, this does not apply to rules in the convention that were already part of customary international law.

Although the two states renewed the Treaty in 1953 as explained above, it is further suggested that the two states modified Article 22 by virtue of the 1973 Saudi-Yemeni Joint Communiqué. This Communiqué declared that the Treaty of Taif would remain valid permanently, which appears to be a valid amendment to the Treaty, consistent with Article 22 of the Treaty of Taif and the principle of *pacta sunt servanda*. Although the 1973 Communiqué was not called a treaty, it was nevertheless concluded by the Yemeni Prime Minster, accompanied by several Yemeni ministers including the Minister of Foreign Affairs, and HRH Prince Sultan bin Abdul Aziz, Minister of Defence on behalf of Saudi Arabia. On this basis, it can be argued that the instrument was intended to have legal effect.

Moreover, regardless of the permanency of the Treaty, Articles 2 and 4 would remain unaffected because they are title/boundary provisions and they are therefore of a dispositive character. Such types of treaty provisions cannot be affected by termination or the emergence of new states, as explained above in relation to the 1914 Anglo-Turkish Convention.[151]

It is worth mentioning that this conclusion is supported by the International Court of Justice's Judgement in the *Libya/Chad case.* Article 22 of the Treaty of Taif was similar to Article 11 of the French-Libyan Treaty of 1955. The latter reads:

> 'The present treaty is concluded for a period of 20 years. The High Contracting Parties shall be able at all times to enter into consultations with a view to its revision. Such consultations shall be compulsory at the end of ten-year period following its entry into force.'

The Court, however, stated that it would not extend operation of Article 11 to the boundary created by the treaty:[152]

> 'These provisions notwithstanding, the Treaty must, in the view of the Court, be taken to have determined a permanent frontier. There is nothing in the 1955 Treaty to indicate that the boundary agreed was to be provisional or temporary; on the contrary it bears all the hallmarks on finality. The establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independently of the fate of the 1955 Treaty. Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of stability of boundaries, the importance of which has been repeatedly emphasized by the Court (*Temple of Preah Vihear, I.C.J. Reports 1962*, p. 34; *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 36).

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[151] Shaw explains the general rule: 'Boundary treaties, whereby either additional territory is acquired or lost or uncertain boundaries are clarified by agreement between the states concerned, constitute a root of title in themselves. They constitute a special kind of treaty in that thet establish an objective territorial regime valid *erga omnes*. Such a regime will not only create rights binding also upon third states, but will exist outside of the particular boundary treaty and thus will continue even if the treaty in question itself ceases to apply.' Shaw, *International Law*, p. 417.

[152] *Case Concerning the Territorial Dispute (Libya/Chad)* (1994) ICJ Reports, paras. 71-72.

> 72. A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary. In this instance the Parties have not exercised their option to terminate the Treaty, but whether or not the option be exercised, the boundary remains. This is not to say that two States may not by mutual agreement vary the border between them; such a result can of course be achieved by mutual consent, but when a boundary has been the subject of agreement, the continued existence of that boundary is not dependant on upon the continuing life of the treaty under which the boundary is agreed.'

The Yemeni argument can be viewed as weaker than the Libyan argument because Yemen had subsequently agreed to the permanent validity of the Treaty of Taif through the 1973 Joint Communiqué, as well as in the 1995 Saudi-Yemeni Memorandum of Understanding.

It must be observed that the latter instrument may or may not create a legal obligation, depending on the ordinary meaning of the text and the intention of the parties, which is not easy to verify. However, it could give a rise to a situation of estoppel, preventing Yemen from denying the permanent validity of the Treaty of Taif. Aust observes how such an obligation may occur:[153]

> 'A unilateral declaration may, depending on the intention of the state making it and the circumstances, be binding in international law. Underlying this is the fundamental international law principle of good faith. Good faith also underpins the doctrine of estoppel (preclusion), which in international law is a substantive rule and broader and less technical than estoppel in the common law, being founded on the principle that good faith must prevail in international relations. The exact scope of the international law doctrine is far from settled but in general it may be said that where a clear statement or representation is made by one state to another, which then in good faith reaies upon it to *its detriment*, the first state is estopped (precluded) from going back on its statement or representation. If two states choose to record the settlement of a dispute between them in a MOU rather than in a treaty- perhaps for reasons of confidentiality- they are clearly estopped from denying that the terms of the settlement are binding.'

Thus, the Yemeni argument of termination, based on Article 22 of the Treaty of Taif cannot be supported by international law.

(f) The Yemeni lease argument

It was Pelletier who put forward the argument that Yemen had leased `Asir, Jizan and Najran to Saudi Arabia according to Article 22 of the 1934 Treaty of Taif: [154]

> 'Article twenty-two called for renewal of the entire treaty at intervals of 20 complete lunar years. To introduce limits to state territory was an unusual feature for an international treaty. One recent commentator interestingly, if mistakenly, comes to the conclusion that the effect of the Taif treaty had been for Yemen to agree to lease `Asir, Jizan and Najran to Saudi Arabia.'

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[153] Aust, *Modern Treaty Law and Practice*, p. 46; See also *El-Salvador-Honduras Land, Island and Maritime Frontier*(1990) ICJ Reports, at pp. 92 and 118.

[154] Pelletier, *Yemen and Stability in the Persian Gulf: Confronting the Threat from Within* (1996) p. 8, as cited in Schofield, 'The International Boundary between Yemen and Saudi Arabia', pp. 20-21, footnote 7.

Brownlie records instances where one state rented territory to another state by an international agreement, such as the Sino-German Convention signed on the 6th March 1898:[155]

> 'China "cedes to Germany on lease, provisionally for ninety-nine years, both sides of the entrance the Bay of Kiao-Chau". Article 3 of the convention provides that China "will abstain from exercising rights of sovereignty in the ceded territory during the term of the lease"...'

Accordingly, the grantor, which is China, keeps title to the leased territory while Germany, the grantee, enjoys usage of the territory without right of transfer of the territory to a third state. Brownlie explains:[156]

> 'In this case China clearly retained residual sovereignty, and the grantee has, for example, no right to dispose of the territory to a third state.'

It is noted that Article 22 of the 1934 Treaty of Taif stated that the two states shall renew the treaty every 20 lunar years and the terms could be amended. However, although this Article may share some similarities with the 1898 Sino-German Convention, the Treaty of Taif included no lease terms. Unlike the Sino-German Convention, Article 4 of the Treaty of Taif states that the fixed boundary line shall divide the two states' territories, without any reference to the word 'lease'. Article 4 of the Treaty of Taif says:

> 'The frontier line which divides the countries of the two high contracting parties is explained in sufficient detail hereunder. This line is considered as a fixed dividing boundary between the territories subject to each...'

In addition, Article 2 explicitly refers to mutual 'full and absolute independence of the Kingdom of the other party and his sovereignty over it.' It continues by stating that Yemen renounces its claims to Najran and the Idrisi lands in `Asir. Interpreting the Treaty of Taif in accordance with Article 31 of the 1969 Vienna Convention on the Law of Treaties, taking into account the ordinary meaning of the text and relevant subsequent agreements[157], it is suggested that the two parties did not conclude a 'lease' agreement but rather defined an international boundary between the two states and placed `Asir, Najran and Jizan under Saudi sovereign control. It is clear then that Article 2 of the Treaty of Taif differs from Article 3 of the 1898 Sino-German Convention which states that China retains title to, or 'residual sovereignty' over, the territory in question. Furthermore, the Treaty of Taif placed no restriction on either Saudi or Yemeni sovereign rights, including the right to transfer title

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[155] Brownlie, *Principles of Public International Law*, p. 111.
[156] Ibid.
[157] Such as the 1973 Joint Communiqué regarding the permanent application of the Treaty of Taif which arguably amends Article 22, as discussed above.

to a third party, in contrast to the position of Germany which, under the terms of the Sino-German Convention, was under an obligation to refrain from exercising rights of sovereignty or transfering title.

Additionally, the 1995 Saudi-Yemeni Memorandum of Understanding leads one to the same conclusion that the Treaty of Taif was not a lease agreement. The preamble states that the two leaders wished:

> '... to fix the frontiers between their countries and to establish relations of good neighbourliness and ties of Islamic friendship between them and to strengthen the foundations of peace and tranquillity between their peoples and countries...'

In order to confirm the interpretation that the Treaty of Taif was not a 'lease' agreement, Article 32[158] of the 1969 Vienna Convention on the Law of Treaties permits recourse to the preparatory works of the treaty. The preparatory work of the Treaty of Taif is found in official records of the negotiations between Saudi Arabia and Yemen which say that the two states were discussing the very boundary lines and title allocation to the disputed territories only.[159]

On these grounds, the argument that Yemen leased its territory to Saudi Arabia is therefore not persuasive.

4. Conclusion

This chapter examined the validity and impact of the 1914 Anglo-Turkish Convention on the title to the Rub' Al-Khali Desert in view of Saudi arguments based on succession of states to boundary/title agreements. The analysis started by examining whether the conclusion of the 1914 Convention was valid under the applicable rules. Then the analysis focused on the nature of the 1914 Convention which proved to be an international boundary/title agreement. In view of this, relevant scholarly opinions, treaties and international cases were applied and it was concluded that international law was in support of the British view that the Violet line settled title issues and the boundary in the area and therefore, Saudi Arabia and Yemen were bound by the 1914 Convention.

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[158] Article 32, 'Supplementary means of interpretation':
'Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable.'

[159] See chapter 2 for a full discussion of the negotiations of the Treaty of Taif.

Then the examination shifted to Yemeni arguments against the validity of the 1934 Treaty of Taif as an international instrument creating a valid title/boundary. After examination of the nature of the treaty's provisions and the applicable international law, it appeared that none of the Yemeni arguments viz., coercion, termination or lease, could be supported.

However, one cannot analyse the territorial sovereignty dispute solely on the basis of the treaties involved. As has been noted in this chapter, the subsequent practice of states could have an impact on deciding who has the best claim to title. On this basis, chapter 4 will consider the traditional modes of title acquisition and what role they could play in deciding who had title to `Asir, Jizan, Najran and the Rub' Al-Khali Desert.

Chapter 4

Claims to title and modes of acquisition: who had a better claim to title?

1. Introduction

This chapter examines who would have had the stronger title claims to the disputed territories had Saudi Arabia and Yemen submitted their territorial sovereignty dispute to arbitration in advance of the Treaty of Jeddah on the 12th June 2000[1], which comprehensively settled the title and boundary issues.[2]

The analysis will first outline the legal status of the disputed territories. It will then identify the legal methods of acquiring territory, applying them to these sovereignty disputes. It will evaluate the arguments raised by Saudi Arabia and Yemen in relation to the disputed territories, and finally determine who had sovereignty over the disputed territories based on the application of international legal principles. Although the analysis is based on title acquisition modes only, it is appreciated that there are other factors - social, geographical, historical and political - which are relevant to the discussion of title. As Lee says:[3]

> 'There is, in fact, considerable difficulty in employing the traditional modes of territorial acquisition in the resolution of recent complicated territorial disputes where the material facts are intertwined with other factors such as political and historical issues. Nonetheless, it is not contended that the relevance of these traditional modes can be totally disregarded, and their functional contribution in clarifying the legal issues in specific disputes cannot be

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[1] It is noted that Yemen called upon Saudi Arabia to accept joint arbitration in 1998 should mutual resolution prove impossible; see Brower and Sharp, 'Note and Comment: International Arbitration and the Islamic World: The Third Phase' (2003) *American Journal of International Law,* vol. 97, footnote 99. Brower and Sharp say that 'the speaker of Yemen's Parliament indicated that his government might call upon Saudi Arabia to arbitrate a 75-year-old border conflict, a course of action upon which the two states had agreed if negotiations failed.' See *Arabic News* article 'Yemen May Try Arbitration to Settle Border Disputes with Saudi Arabia' (October 12th 1998): http://www.arabicnews.com/ansub/Daily/Day/981012/1998101225.html;
In an interview with Abu Dhabi TV in March 2000, President Ali Saleh of Yemen stated that Yemen was ready for arbitration if negotiation for the final settlement of the boundary issues failed.

[2] See chapter 5 for an analysis of the 2000 Treaty of Jeddah.

[3] Lee, 'Continuing Relevance of Traditional Modes of Territorial Acquisition Modes in International Law and a Modest Proposal' (2000) *Connecticut Journal of International Law,* vol. 16, p. 1. He also refers to Brownlie, who said '[T]he whole concept of modes of acquisition is unsound in principle and makes the task of understanding the true position much more difficult. The issue of territorial sovereignty, or title, is often complex, and involves the application of various principles of the law to the material facts. The result of this process cannot always be ascribed to any single dominant rule or 'mode of acquisition'. See Brownlie, *Principles of Public International Law* (1998) pp. 129-130.

> ignored. Accordingly, it is more realistic to acknowledge the interplay between the traditional modes and recent developments.'

Thus, an analysis based purely on title acquisition modes may have some limitations; had a tribunal been asked by Yemen and Saudi Arabia in 2000 to settle the dispute, it would have also borne in mind non-legal justifications such as historical, geographical and cultural justifications. To illustrate, the International Court of Justice decision issued on 17th December 2002, in the *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia)[4] ignored neither private activities (such as collection of turtles and turtle eggs[5] -claimed by Malaysia as the most important economic activity on the Island of Sipadan) nor state-built lighthouses although they usually would not by themselves amount to form a valid evidence of manifestation of State authority considered in doctrine of *effectivités*. As a matter of facts, the collections of turtle eggs and turtles by private fishermen occurred due to geographical and social characteristics of the area. In addition, Malaysia relied on her control over the collections of turtles and of turtle eggs,[6] and on the establishments of a bird sanctuary on Sipadan in 1933, and the constructions of lighthouses on Islands of Ligitan and Sipadan in 1960s by British North Borneo colonial authorities (predecessor of Malaysia) which remained under Malaysian authorities. Therefore, the Court, on an exceptional ground,[7] accepted Malaysian activities in its argument of *effectivités*.[8] Therefore, it is safe to say that the ICJ decision balanced between application of legal rules and non-legal factors. This resulted in applying rules of law taking into consideration other non-legal elements and evidence that in other older case was considered insufficient evidence.[9] This could be supported by Judge Higgins's opinion that a court or tribunal should realise that:[10]

> 'The function of international law is to find that fine balance between legal expectations generated by the experiences of the past and the solving of problems as they present themselves today.'

Nonetheless, this chapter aims to suggest the expected findings of the arbitration based on the legal aspects of the dispute due to lack of sufficient information on non-legal elements

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[4] *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipada* (2002) ICJ Reports, paras. 126-149.
[5] Ibid., para. 132.
[6] Ibid., para. 146.
[7] Ibid., para. 147.
[8] Ibid., para. 145.
[9] For instance, in *Minquiers and Ecrehos case,* the ICJ decided that the construction and operation of lighthouses and navigational aids were not usually considered manifestations of State authority; see ICJ Reports (1953), p.71.
[10] Higgins, R., 'Reflections from the International Court', in Evans, M. (ed.), *International Law*, Oxford University Press (2003), p.6.

such as Saudi-Yemeni tribal and governmental activities in the Rub Al-Khali which took place pre-the 2000 Treaty of Jeddah settlement.

2. Legal status of the disputed territories

(a) Types of territory in international law

There are several different types of territory in international law which affect the applicable modes of title acquisition. Fawcett illustrates three types of territory:[11]

> 'The surface of the Earth, and the accessible parts below it, are covered by three possible régimes in international law. An area may be already under territorial sovereignty; or it may be *res nullius*, capable of being brought under territorial sovereignty but not yet so brought; or incapable of being so brought, and designated *res communis*, for example the high seas.'

Brownlie, by contrast, elaborates four types of territorial regimes[12]:

> 'In the spatial terms the law knows four types of regime: territorial sovereignty, territory not subject to the sovereignty of any state or states and which possesses a status of its own (trust territories, for example), the *res nullius* and the *res communis.* A *res nullius* consists of the same subject-matter legally susceptible to acquisition by states but not yet as yet placed under territorial sovereignty.'

The relationship between the legal status of territory and the applicable modes of title acquisition is, in turn, noted by Sharma[13]:

> 'While prescription and occupation, as traditionally perceived, bear some resemblance, they must also be distinguished. While the latter term applies to territory which has not been already in the possession of any territorial entity (*terra nullius*), prescription refers to title to a territory which has been in possession of some other state, lawfully or unlawfully. This means that prescription may apply even though the original possession may have been tainted with fraud or violence. Furthermore, as Johnson has pointed out, in order to establish a title by prescription both a stricter proof of possession and a longer period of possession is required, as compared with the establishment of a title by occupation. This is so because, "the essence of prescription is the acquiescence, express or implied, of the one state in the adverse possession of the other".'

It is safe to say that the legal status of the formerly disputed Saudi-Yemeni territories of `Asir, Jizan, Najran and the Rub' Al-Khali Desert were neither *res communis* nor among those defined by Brownlie as:[14]

> '...territory not subject to the sovereignty of any state or states and which possesses a status of its own, trust territory.'

Therefore, the legal status of these territories could be either *terra nullius* or state territory, the title to which is held by a sovereign state. If the Saudi-Yemeni disputed territories were

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[11] Fawcett, *The Law of Nations* (1968) p. 56. See also Schwarzenberger, who adopts a similar classification: Schwarzenberger, *A Manual of International Law*, (1960) vol. 1, p. 113.
[12] Brownlie, *Principles of Public International Law* (1998) p. 105.
[13] Sharma, *Territorial Acquisition, Disputes and International Law* (1997) p.114.
[14] Brownlie, *Principles of Public International Law,* p. 105.

not *terra nullius*, then prescription, historical rights, or conquest could be involved in the title claims and the analysis thereof.

(b) Tribes and the status of territory

The issue of legal status of territories occupied by tribes living in Arabia and Africa, not dependent on any states, is of vital importance in this context given that several of the disputed territories were occupied by tribes. It seems that there is a lack of consensus among jurists regarding tribes' rights to enjoy title to their territories. Ricciardi observed this disagreement when examining the legal status of the territory known as the Aouzou Strip, formerly disputed by Libya and Chad, and occupied by the Toubous:[15]

> 'Writers were unanimous in stating that any land was *terra nullius* was open to occupation. They differed among themselves, however, in defining *terra nullius*. In general, *terra nullius* was any part of the earth's surface that was not yet appropriated and was susceptible to occupation. The requirement that the land be as yet unappropriated caused considerable difficulty. Scholars agreed that uninhabited and abandoned land, as well as land inhabited only by scattered individuals without any political organization, was *terra nullius*. They also agreed that land belonging to a recognised non-European state, such as Turkey or Japan, was not *terra nullius*. They could not agree, however, whether the land possessed by "savage" or "barbaric" tribes with a rudimentary organization qualified as *terra nullius* or whether, on the contrary, such tribes were deemed to be sovereign and their rights entitled to respects.'

The same authority notes three schools of thoughts on the issue of tribal sovereignty based on tribal possession.[16] According to the first school, a tribe is not entitled to enjoy title to its territory, which is consequently considered *terra nullius*. Any state could gain title to such territory by virtue of discovery and occupation. Ricciardi explains[17]:

> 'The first school, relying on the state practice of occupying the land of such tribes, held that such tribes possessed no rights of sovereignty under international law and that civilized states could therefore occupy their land at will. These writers argued that international law was meant to regulate only the conduct of the members of international society, and that since "uncivilized natives" were not members of international society, international law did not recognize or protect them.'

This indicates 'civilization' to be a qualification required in order to enjoy possession of title:[18]

> 'Civilization was defined as the ability "to supply a government adequate to the white men's needs or to [the natives'] own protection". Essentially, this view required natives of a territory to achieve a degree of development equivalent, or nearly so, to that of Europe. In practice, this view sanctioned occupation in any case where the natives were unable to resist a European intrusion-in effect making any occupation, once achieved, legal.'

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[15] Ricciardi, 'Title to the Aouzou Strip: A Legal and Historical Analysis' (1992) *The Yale Journal of International Law,* vol. 17, no. 2, pp. 395-96.
[16] Ibid., p. 396.
[17] Ibid., pp. 396-397.
[18] Ibid., p. 397.

In addition, these scholars denied any effect to treaties of cession signed between tribes and European or equivalent states[19]:

> 'Members of this school strongly disapproved of the practice of concluding "glass-bead" treaties of cession with native tribes. They preferred occupation to such treaties because they believed that the natives, having no conception of what Europeans meant by "sovereignty", were simply incapable of comprehending what they were ceding and thus were not competent to cede it.'

The second school of thought believed in tribes' rights to enjoy title to their territories, the implication being that the legal status of those territories is not *terra nullius*. Ricciardi explains the justification behind the second opinion which postulates that even "savage" tribes enjoy title to their territories: [20]

> '[This school of thought] held that "savage" tribes possessed a right of sovereignty that was entitled to absolute respect as long as the members of the tribe were "connected by some political organization, however primitive and crude". Any other view, they argued, would sanction the principle that might makes right. They argued insisted that the only permissible means of acquiring the land held by such tribes was the use of treaties of cession executed in full conformity with all tribes customs and rules.'

Lindley suggest that the reason that the tribe is given a right to enjoy title is due to its ability to control its members within a minimal level of organization which is mostly enjoyed by "uncivilised people":[21]

> 'Many of the so-called "savage" races...possess organized institutions of government, and it cannot be truly said that the territory inhabited by such races is not under any sovereignty. Such sovereignty as is exercised there may be of a crude and rudimentary kind, but, so long as there is some kind of authoritative control of a political nature which has not been assumed for some merely temporary purpose, such as a war, so long as the people are under some permanent form of government, the territory should not, it would seem, be said to be unoccupied.'

The final school of thought as to a tribe's rights to sovereignty over territory takes a middle position. That is to say that it proposes that, as long as the territory is not claimed by a state, the tribe possessing the territory enjoys title to it. Ricciardi observes:[22]

> '[This school of thought] held that such tribes possessed a right of sovereignty that was circumscribed by the superior rights of civilization and colonization. In effect this theory produced the same results as the first school: if a European state wanted to take the land, it had only to assert its superior rights. It was essential to the advocates of this view, however, that the occupying state actually need the territory and be able to utilize it more effectively than the natives; that is, it must actually try to colonize and civilize the territory. In reality, this requirement posed no obstacles to an appropriation of territory.'

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[19] Ibid.
[20] Ibid.
[21] Ibid., p. 398, footnote 592, citing Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926) pp. 12-17.
[22] Ricciardi, 'Title to the Aouzou Strip: A Legal and Historical Analysis', p. 398.

In contrast, territories in Australia occupied by 'isolated individuals who were not united for political action' could be subject to occupation, according to Ricciardi.[23]

The issue of tribal rights to territory came before the International Court of Justice in the *Advisory Opinion on the Western Sahara*. The ICJ was asked by the United Nations General Assembly to answer two questions. Firstly, was Western Sahara at the time of colonization by Spain a territory belonging to no-one, in other words *terra nullius*? Secondly, what were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity? Given the prevailing concept of *terra nullius* in the nineteenth century when the King of Spain declared his protection over the territory, the ICJ concluded that the Western Sahara was not *terra nullius* when Spain gained possession over the territory occupied by local tribes, because those tribes had enjoyed the title even though they were not "civilised". The Court said:[24]

> 'For the purposes of the Advisory Opinion, the "time of colonization by Spain" may be considered as the period beginning in 1884, when Spain proclaimed its protectorate over the Rio de Oro. It is therefore by reference to the law in force at that period that the legal concept of *terra nullius* must be interpreted. In law, "occupation" was a means of peaceably acquiring sovereignty over territory otherwise than by cession or succession; it was a cardinal condition of a valid "occupation" that the territory should be *terra nullius.* According to the State practice of that period, territories inhabited by tribes or peoples having a social and political organization were not regarded as *terra nullius:* in their case sovereignty was not generally considered as effected through occupation, but through agreements concluded with local rulers. The information furnished to the Court shows *(a)* that at the time of colonization Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them; *(b)* that Spain did not proceed upon the basis that it was establishing its sovereignty over *terra nullius:* thus in his Order of 26 December 1884 the King of Spain proclaimed that he was taking the Rio de Oro under his protection on the basis of agreements entered into with the chiefs of local tribes.'

In sum, it seems that tribes can indeed possess title to territory providing that they meet a test of social and political organisation.

(c) Legal status of Najran

Before the emergence of the Idrisi state (1910-1926) and the Saudi-Yemeni claims to the disputed territories (from 1927), Najran was under neither the Ottoman nor the British regime but under the control of the Yam tribe.[25] During this period, Najran enjoyed a special

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[23] Ibid., p. 399 and footnote 596.
[24] *Advisory Opinion in the Western Sahara Case* (1975) ICJ Reports, paras. 75-83.
[25] See chapter 1 on Najran's social and political history and geography.

status.[26] The question arises whether at this time Najran was a *terra nullius* territory open for occupation because of its sole occupation by the Tribe of Yam. Alternatively, did the Yam, although a tribe, enjoy title to Najran?

The Yam tribe was based on permanent agriculture and commercial activities.[27] Bin Hethlain Al-Ajmi's describes the Yam's military powers; he reveals that Yam fighters were under Hibat-Allah Al-Makrami, the religious head of Najran who recruited Najran's men to fight the Saudi army in 1763 shortly after the emergence of the first Saudi State in Najd in 1755.[28] It is noted that, although the Yam had no opportunity to prove its capability to conduct relations with European powers, it successfully managed to participate in the Idrisi Army in affiliation with the British military campaign attacking the Ottomans and northern Yemeni troops during World War I in 1915.[29] Futhermore, Abaza described how, when Sayyed Mohammed bin Ali Al-Idrisi started his struggle for secession from Ottoman sovereignty in `Asir and Jizan in 1908, the Yam's fighters were a strong force in the Idrisi official army, and under Idrisi military commanders appointed by the Idrisi independent ruler in 1915, they attacked Hudaidah and other cities inside the Ottoman Vilayet of Yemen. Therefore, before the demise of the Ottoman Empire and the emergence of the Idrisi State (1910-1926) Najran was not *terra nullius* because, in international law, territories occupied by organised tribes are not considered *terra nullius*.

Even if the territory in question was *terra nullius* before 1915, it ceased to be so once affiliated with the Idrisi State, which acquired title to Najran due to the allegiance of the Yam's fighters.[30] The Yam fighters participated in the Idrisi Army under two Idrisi commanders: Mansoor bin Hamood Abu-Mosmar, and Ahmed bin Bakry Al-Marwani.[31] They attacked different Ottoman military centres inside northern Yemeni territory as Al-Idrisi was allied[32] with the British against the Ottomans. It is suggested that this allegiance to

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[26] Al-Zulfa, *Asir during the Reign of King Abdul Aziz: Its Political, Economic, and Military Role in Building of the Modern Saudi State (In Arabic)* (1995) p. 173.
[27] See chapter 1 for further information on the history and population of the disputed territories, and on the Saudi presence there.
[28] Bin Hethlain, *History of Ajman Tribe (in Arabic)* (1998) p. 29.
[29] Abaza, *Britain's Policy in Asir During World War I (In Arabic)* p. 46
[30] Ibid.
[31] Abaza added that the Idrisi troops included fighters from the Hashid and Bakeel tribes, the two prominent northern Yemen powers: see ibid.
[32] Leatherdale writes that 'He [Idrisi] was the first Arab ruler to join the allies, and was promoted by his fears of the Turks and the Imam [Yahya]': Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis* (1983) p. 137.

the Idrisi in 1915 is sufficient to show that the Idrisi administered and exercised state power over Najran by practising sovereignty over the tribe of Yam occupying Najran.

This conclusion is based on an analogy with the *Dubai-Sharjah Border Award (1981).*[33] In this dispute Sharjah claimed sovereignty over certain inland and desert areas inhabited by the Bani Qitab tribe based on the allegiance of that tribe to Sharjah's ruler. Since the inlands were controlled by Bani Qitab, who claimed allegiance to Sharjah, not Dubai, it was Sharjah that was considered by the tribunal to have exercised administrative power over the disputed territory. McHugo explains:[34]

> 'In the Dubai/Sharjah border award, the tribunal held that certain inland, desert areas belonged to Sharjah, and not to Dubai, because control was administered there through the allegiance of the Bani Qitab tribe to Sharjah. Conventional acts of sovereignty, in this remote area were few but the tribunal satisfied itself that under local concepts this tribe controlled the area. Since it gave its allegiance to Sharjah, it was held that this allegiance involved a form of administration and control by Sharjah. This was also something that had been recognised by the British Government, with which both Emirates were in special treaty relationship.'

This reflects the stance of international law that sovereignty manifestations depend on the nature of a territory, its population and regime, and also on prevailing concepts of sovereignty in the disputed region.[35] Thus McHugo suggests that a remote territory could be acquired by virtue of small manifestations of control[36]:

> 'What will constitute good evidence of title and maintenance of title will vary according to the nature of the territory in question. A state may acquire and maintain title to a barren and remote territory, or an uninhabited or sparsely populated island, with considerably less in the way of acts of sovereignty than would be necessary in the major centres of its political power. ...If the territory is remote, and was historically considered of small importance, surprisingly little may be adequate in order to establish and main title.'

Additionally, Bowett notes that in the Arab world, sovereignty is personal/tribal rather than territorial. This had an effect on manifestations of sovereignty in boundary and title disputes:[37]

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[33] *Dubai-Sharjah Border Award* (1981) *ILR*, vol. 91, pp. 635-652. See also Bowett, 'The Dubai/Sharjah Boundary Arbitration of 1981' (1994) *British Yearbook of International Law,* pp. 123-125. See also McHugo, 'How to prove title to territory: A brief, practical introduction to the law and evidence', p. 12.

[34] Ibid.

[35] See *The Island of Palmas Case* (1928); the Award is also included as an appendix to Jennings, *The Acquisition of Territory in International Law* (1963) p. 93.

[36] McHugo, 'How to prove title to territory: a brief, practical introduction to the law and evidence', p. 2.

[37] Bowett, 'The Dubai/Sharjah Boundary Arbitration of 1981' (1994) *British Yearbook of International Law,* p. 104. He adds that, 'Not only did allegiance change from time to time, but so did the territory constituting the '*dirah*' of a particular tribe; and, in any event, with nomadic tribes the idea of the '*dirah*' or homeland was not one which presupposed fixed boundary lines.

> '...the idea of fixed, defined boundaries was totally alien to the Arab world. The area subject to a particular Ruler depended on which tribes owed allegiance to him.'

Therefore, from 1915, Najran was controlled by the Idrisi state and had the status of state territory. Thus it was not open to occupation by Saudi Arabia or Yemen.

(d) Legal status of `Asir and Jizan

As early as the 1870s `Asir (including Jizan) was part of the Ottoman Empire territory.[38] During the 19th century the European states generally did not observe international law in their relations with non-European states. However, although the Ottoman Empire was not a European state, its territories were not considered *terra nullius*. Ricciardi notes:[39]

> '[Jurists] also agreed that land belonging to a recognised non-European state, such as Turkey and Japan, was not *terra nullius*.'

Therefore, had a tribunal been formed in 2000 to decide title to `Asir and Jizan, it would have tracked the regime of those territories since the time of the previous ruling states, before the emergence of Saudi Arabia and Yemen as two independent states.

It was not only the Ottoman Empire that from the 1880s until 1910 had previously ruled `Asir and Jizan, but also the Idrisi State, having ruled parts of these areas from 1910 to 1926.[40] Leatherdale explains that the Ottomans lost sovereignty over `Asir and Jizan in 1915 as the rebellious chief, Al-Idrisi, managed to gain British recognition of his independence according to the Anglo-Idrisi Treaty signed in 1915:[41]

> 'In April 1915 the Idrisi signed a treaty with the British Government, backed by a supplementary agreement two years later. He was first the Arab ruler to join the allies, and was promoted by his fears of the Turks and the Imam [Yahya]. Under the treaty Britain undertook to safeguard the Idrisi's territories from all attacks on his seaboard. He was also guaranteed independence in his own domain and was promised that, at the conclusion of the War, Britain would use every diplomatic means in her power to adjudicate between the rival claims of the Idrisi and the Imam, or any other ruler.'

Al-Zulfa[42] and Abaza[43] recall that Al-Idrisi managed to recruit Yam men to join his army to attack northern Yemen and the Ottomans inside the Yemeni administrative unit in 1915.

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[38] See chapter 1.
[39] Ricciardi, 'Title to the Aouzou Strip: A Legal and Historical Analysis', p. 396.
[40] Read chapter 1 on the history of the Idrisi presence in the disputed territories.
[41] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis,* p. 137.
[42] Al-Zulfa, *Asir during the Reign of King Abdul Aziz: Its Political, Economic, and Military Role in Building of the Modern Saudi State (In Arabic),* p. 182.
[43] Abaza, *Britain's Policy in Asir During World War I (In Arabic),* p. 46.

That in turn helps to show that the Ottoman Empire lost title to `Asir and Jizan as of 1915. This is because a state loses title to territory by virtue of 'revolt':[44]

> 'Revolt followed by secession of has been accepted as a mode of losing territory to which there is no corresponding mode of acquisition'

That 1915 revolt caused the Ottoman loss of title in `Asir and Jizan, followed by the emergence of the Idrisi State. However, it does not follow that the Idrisi gained title to `Asir and Jizan as a result of the revolt, because such a revolt does not automatically give title to a new state. Oppenheim explains further:[45]

> 'When a new state comes into existence, its title to its territory is not explicable in terms of the traditional 'modes' of acquisition of territory. The new state's territorial entitlement is more to do with recognition; as soon as recognition is given, the new state's territory is recognised as the territory of a subject of international law; although, questions of succession and of legal history of the territory may also be involved where particular boundaries, or the precise extent of the territory, are doubtful or disputed.'

Somewhat similarly, Brilmayer writes that new states are entitled to title over their territories once a successful secession is attained:[46]

> 'Once free of colonial rule, the newly established states become entitled to territorial sovereignty.'

It appears that the Idrisi State existed from 1915 when Britain recognised Sayyed Mohammed bin Ali Al-Idrisi as independent Idrisi ruler over his territory in south-west Arabia. He had title to `Asir and Jizan, which he was allowed to transfer by cession to any other separate international persons or sovereign states. Further, Najran appears to have been under Idrisi sovereignty as of 1915.[47]

It is therefore concluded that the territory of `Asir and Jizan was state territory because the Idrisi state, consisting of that territory, had met the four conditions of statehood: territory, population, government and capacity to enjoy international relations.[48]

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[44] Jennings and Watts, *Oppenheim's International Law* (1992) p. 717.
[45] Ibid., p. 677.
[46] Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation' (1991) *The Yale Journal of International Law,* vol. 16, p. 183. This is also examined under sections on legal status of Najran, `Asir and Jizan earlier.
[47] See above.
[48] 1933 Montevideo Convention, Article 1. See Crawford, *The Creation of States in International Law* (1979) pp. 31-76. It is noted that Britain, whilst recognising the Idrisi independence within its territory in the 1915 Anglo-Idrisi Treaty, did not place the Idrisi under an obligation to refrain from having international relations, in contrast to Article 3 of a similar treaty with Saudi Arabia in 1915.

(e) Legal status of the Rub' Al-Khali Desert

The regime of this sector is also examined dating back to as early as the beginning of nineteenth century. Occupied by nomadic tribes, the Rub' Al-Khali Desert was and still is occupied by tribes of Al-Murra, Sayyer, Manahel, and others, as shown on Al-Ghamdi's map.[49] Before the Ottomans and the British signed the 1914 Anglo-Turkish Convention, organising territorial sovereignty limits between them in this area, the territory could be argued as having been *terra nullius*, depending on the level of organisation of the tribes in the area.

However, even if the territory had been *terra nullius* before 1914, it became state territory if one accepts that it was delimited according to the 1914 Anglo-Turkish Convention.[50] Thus the Rub' Al-Khali Desert was from that time state territory, divided between the Ottomans on one side and the British-protected territories on the other.

However, Beckett, legal advisor to the British Government, said that there was the possibility that territories located beyond the Blue and Violet lines as set out in the 1913-14 Conventions were *terra nullius* if they were not occupied by Saudi Arabia. Beckett did not believe in the validity of the 1913-14 Anglo-Ottoman Conventions as binding agreements of a dispositive nature[51], rather he saw them as sphere of influence treaties. He stated:[52]

> 'The conclusion to be drawn from all this is that, while we [the British] are perfectly justified to use the blue line and the position of Ibn Saud [King Abdul Aziz] as a successor of Turkey etc. as much we can in negotiating with Ibn Saud in order to secure the most acceptable frontier possible, in wording future agreements, I do not think we should win before a tribunal, deciding the matter on legal principles, if the issue was whether the area immediately east of the blue line was a part of the territory of the Sheikh of Qatar, a British protected principality, or if it was *res nullius* (*terra nullius*), whether Ibn Saud was free to acquire territory by occupation, or prescription if he could produce evidence of the state of affairs necessary to support such a claim.'

In fact, Beckett said that the territory to east of the Blue Line in 1934 was, he believed, *terra nullius*. Although Turkey in 1913 agreed that the territory east of the Blue Line belonged to Qatar, Turkey was not forbidden from acquiring it by crossing the Blue Line and establishing title by occupation, because the territory was *terra nullius* as it was not actually under Qatar's possession. In addition, in 1934 there was the possibility that Saudi Arabia, as

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[49] See map at Appendix 2.10.

[50] IOR, *Confidential Eastern (Arabia) Document No. E 5063/2429/25,* 3rd August 1934, Reference R/15/1/603, p. 1.

[51] See chapter 3 for a discussion of dispositive treaties and the nature of the 1914 Anglo-Turkish Convention.

[52] See Memorandum by Beckett, IOR, E 5063/2429/25, p. 148.

successor of Turkey, could do the same, unless Qatar had already acquired actual possession. Beckett further, explained:[53]

> 'Turkey, Ibn Saud's predecessor, did, it is true, impliedly agree in 1914 treaty that the territory east of the line belonged to the sheikhdom of Qatar, but I do not think that even against Turkey this Treaty would mean that Turkey had undertaken not to cross the line, and acquire sovereignty there by occupation if, in fact, the territory was res nullius, and sheikh of Qatar and His Majesty's Government did nothing to establish themselves there. Still less, I think, could it be said that this treaty had this legal effect as regards Ibn Saud as Turkey's successor. The facts being what they are, I think, it is impossible really to establish that the area in fact belonged to the sheikh of Qatar in 1914, and if this is so, I see no ground upon which His Majesty's Government could have established any title to it at that time. It was res nullius. The position is clearly weaker today because there is certainly some evidence that Ibn Saud has in fact to some extent established his own authority there. I am not attempting to advise now whether the amount of authority Ibn Saud has exercised up to this date is sufficient to give him title by occupation or prescription, or whether it is only a state of affairs which will produce this result in time, if his present authority there is maintained and increased. On these grounds I think that this territory immediately east of the blue line is at present either res nullius or (conceivably) in parts already under the sovereignty of Ibn Saud.'

On this view, the status of the Rub' Al-Khali Desert stretching from the east of the Blue line to the south of the Violet line depended on the Saudis or the British taking that area under their control. Al-Nu`iam suggests that the view that these territories were *terra nullius* was also adopted by both Saudi Arabia and Britain in their negotiations over the Rub' Al-Khali Desert from 1934 to 1955:[54]

> 'This dispute ...was about lands and groups of individuals some of them - as a matter of fact - who were not subject to the sovereignty of either party to the dispute. Actually, before the dispute emerged, none of the lands of the internal tribal entities, namely those in vicinity of northern Hadramut (Eastern Aden Protectorate), were dependent on anybody from a legal aspect viz. (*res nullius*). Therefore, both parties to the dispute competed with each other to win the allegiance of those tribes so that they could exercise sovereignty within those frontiers.'

Therefore it might be possible that the Rub' Al-Khali Desert was *terra nullius* and open to occupation by the two disputing states. However, the author remains of opinion that the 1914 Anglo-Turkish Convention delimited the frontier and title subject to the subsequent conduct of Britain and Yemen which could have the effect of modifying the boundary. The impact of subsequent conduct and estoppel is examined below.

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[53] Ibid., pp.145-146.

[54] Al-Nu`am, *Saudi Political Boundaries: Looking towards stability* (1999) pp. 50-51.

3. Important legal doctrines in title disputes

(a) Inter-temporal law doctrine

The doctrine of inter-temporal law is of importance in the settlement of territorial sovereignty disputes. Sharma considered the *Island of Palmas* case as the source of the doctrine: [55]

> 'The *Island of Palmas* case laid the foundation of intertemporal law. This meant that effectiveness of occupation is required both for the initial acquisition of the territory and its subsequent maintenance. This and other cases provide that the acquisition of territory not only should be consistent with the international law in existence at the time when a particular act was done or alleged right arose but also that the continuing sovereignty should satisfy the requirements of the international law as developed in later periods until the critical date.'

Jennings explains the particular importance of the principle in the case of title disputes: [56]

> 'The rule that the effect of an act is to be determined by the law of the time when it was done, not of the law of the time when the claim is made, is elementary and important. It is merely an aspect of the rule against retroactive laws, and to that extent may be regarded as a general principle of law. It is especially important in international law because of the length of the life of states. It is peculiarly apt to questions of title; thought by no means confined to questions of title.[57] The authority for the rule most frequently quoted is the Award of Max Huber in the *Island of Palmas case*. ...It will be remembered that the United States claimed the Island because of a cession to her from Spain, Spain having, it was said, discovered the Island in the early 16th century. The principle of the intertemporal law was an essential ingredient of the American case, for it enabled her to argue that a mere discovery, *at that time,* gave title, though mere discovery without occupation could not be said that to give title at the time the action was brought. The Netherlands in reply did not deny the validity of the rule of the intertemporal law'.

The importance of inter-temporal law is also recognised by other scholars such as Sharma, Brownlie, Shaw, and McHugo.[58]

(b) Critical date

The concept of the critical date demonstrates the importance of the role of time as a limitation on the acceptance or rejection of claims to title made by states. The critical date is not always considered by judges or arbitrators in every case, but it is common. Brownlie explains: [59]

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[55] Sharma, 'Boundary Dispute and Territorial Dispute', p. 98; see also Elias, 'The Doctrine of Intertemporal Law' (1980) *American Journal of International Law, vol.74,* p. 285, footnotes 1-3.
[56] Jennings, *The Acquisition of Territory in International Law* (1963) p. 28.
[57] Jennings indicates the applicability of *inter-temporal law* extended to include examination of claims to questions of the validity and effect of a 'treaty' as he gives an example from the *Right of Passage case*. See ibid., p. 28, footnote 1.
[58] See Sharma, *Territorial Acquisition, Disputes and International Law*, p. 98; Brownlie, *Principles of International Law,* pp. 126-128; Shaw, *International Law* (1997) pp. 346-347. See also McHugo, 'How to prove title to territory: A brief, practical introduction to the law and evidence'.
[59] Brownlie, *Principles of Public International Law*, p. 128.

> 'In any dispute a certain date, or several dates, will assume prominence in the process of evaluating the facts. The choice of such a date, or dates, is within the province of the tribunal seized of the dispute and will depend in some circumstances on the inevitable logic of the law applicable to the particular facts and, in other cases, on the practical necessity of confining the process of decision to relevant and cogent facts and thus to acts prior to the existence of a dispute. In the latter context the tribunal is simply employing judicial technique in the use of evidence and more especially the exclusion of evidence consisting of self-serving acts of parties at a stage when it was evident that a dispute existed. Of course, evidence of acts and statements occurring after the critical date may be admissible if not self-serving, as in the case of admissions against interest. There are several types of critical date, and it is difficult and probably misleading to formulate general definitions: the facts of the case are dominant (including, for this purpose, the terms of the special agreement empowering the tribunal to hear the case) and there is no necessity for a tribunal to choose any date whatsoever. In many cases there will be several dates of varying significance.'

Different measures are used to identify the critical date, depending on the circumstances of each case and the title acquisition modes involved in the claim. If a state claims title based on cession then the relevant treaty's date would normally (but not necessarily) be the critical date. Jennings suggests that the use of a critical date by judges or arbitrators can first be observed in the arbitral Award in the *Island of Palmas case* in 1928: [60]

> 'The term seems first to have been used by Max Huber in the *Island of Palmas* case where, it will be remembered, the United States claimed title from a cession of the Island by Spain in the Treaty of Paris of December 10, 1898. Obviously the validity of this claim depended upon whether Spain did herself enjoy sovereignty at the moment of the purported cession; and Huber therefore quite naturally referred to the date of the treaty as 'the critical date'.

In this regard, Arbitrator Huber in the *Island of Palmas case* referred to the critical date as the 'critical moment': [61]

> 'The essential point is therefore whether the Island of Palmas (or Miangas) at the moment of the conclusion and coming into force of the Treaty of Paris formed a part of the Spanish or Netherlands territory. The United States declares that Palmas (Miangas) was Spanish territory and denies the existence of Dutch sovereignty; the Netherlands maintain the existence of their sovereignty and deny that of Spain. Only if the examination of the arguments of both Parties should lead to the conclusion that the Island of Palmas (or Miangas) was at the critical moment neither Spanish nor Netherlands territory, would the question arise whether-and, if so, how- the conclusion of the Treaty of Paris and its notification to the Netherlands might have interfered with the rights which Netherlands or the United States of America may claim over the island in dispute.'

If a state claims title to territory through occupation of a *terra nullius* territory, then the day of the announcement of occupation would normally be the critical date. For instance, Jennings and Brownlie cite the *Eastern Greenland* case between Denmark and Norway, decided by the Permanent Court of International Justice; the court identified the 10th July 1931 as the critical date since it was the day on which Norway claimed title to the disputed

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[60] Jennings, *The Acquisition of Territory in International Law*, p. 31.

[61] *Arbitral Award of The Island of Palmas case*, found in Appendix of Jennings, *The Acquisition of Territory in International Law*, at p. 97.

territory through the use of occupation, which is applicable in the case of a *terra nullius* occupation.[62]

Therefore the specific criteria for determining critical date vary from one case to another. Indeed, as mentioned above, a court or tribunal may decide that it is not necessary to set a critical date. This was the case in *Minquiers and Ecrehos* case.[63] Brownlie notes that the International Court of Justice did not indicate a certain critical date in its evaluation of evidence.[64] Due to the important role that critical date plays in deciding the admissibility of evidence, France and Britain each argued for a different critical date.[65] The French argument rested on the date of the Convention of the 2nd August 1839; that of the United Kingdom on the date of the compromise: the 29th December 1950.

Jennings commented that such a disagreement in defining the suitable critical date in a case means that the reasons unpinning the choice of a critical date may need extra scrutiny, opening the door for conflict: [66]

> 'It is no longer an obvious choice but a question for careful decision, and may be a matter of contention between the parties; as indeed it was the *Minquiers and Ecrehos* case. It will be remembered that the French, relying upon a Fisheries Agreement of 1839, tried to establish that it was only necessary for them to show a French title at that date in order to exclude the relevance of evidence of facts of sovereignty by either party subsequent to 1839. It would have been a great advantage to the French if this had been accepted by the Court as the critical date, because the bulk of acts of sovereignty since 1839 greatly favoured the British case. The British argument naturally favoured a more recent critical date.'

Fitzmaurice says that the critical date can be no later than the time of starting the proceedings of litigation in the dispute: [67]

> 'Such a date must obviously exist in all litigated disputes, if only for the reason that it can never be later than the date on which legal proceedings are commenced. The actions of the parties after that date cannot affect their legal positions or rights as they then stood.'

Fitzmaurice, when representing the United Kingdom in the *Minquiers and Ecrehos* case[68], commented on the issue, presenting other criteria that could reasonably be used to determine

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[62] Ibid., p. 32.
[63] In this case between France and UK, France claimed that the critical date was the 2nd August 1839, which was the date on which the Fisheries Agreement was signed. In turn, Britain claimed that the 29th December 1950 was the critical date since it was the date when the France and Britain signed the *compromis* for the settlement of the dispute. See Brownlie, *Principles of Public and International Law,* p. 120, footnote no. 22; see also Jennings, *The Acquisition of Territory in International Law,* p. 33.
[64] Brownlie, *Principles of Public and International Law,* p. 129.
[65] Ibid., p. 129, footnote 22.
[66] Jennings, *The Acquisition of Territory in International Law,* pp. 32-33.
[67] Ibid., p. 32, footnote 3.

the critical date. As noted, he first indicated the date of the conclusion of compromise between the disputing states (which was the 29th December, 1950) as the critical date, whilst still admitting that this was not necessarily the only possible critical date: [69]

> '...in the ordinary course of events and assuming that once a concrete issue has arisen between two countries, they decide to settle it by international adjudication, the critical date would in principal be that date on which they agreed to submit the dispute to a tribunal. However, there may be cases where the critical date should nevertheless be some other date...one object of the critical date is to prevent one of the parties from unilaterally improving its position by means of some step taken after the issue has been definitely joined, as when the party in question is rejecting or evading a settlement, for instance, refusing to go to arbitration...'

He adds:

> 'So much for not putting the critical date too late. But equally, if not more important, is not to put the critical date too early, thereby shutting out acts of the parties that were carried out at a time when each of them was perfectly entitled to take any legitimate steps in the assertion or prosecution of its claim... To put the critical date too early would be to place a premium on the making of paper claims which the country concerned need not then follow up or insist upon, because it would be secure in the knowledge that the mere making of the claim would operate to freeze the legal position and to shut out or nullify the value of all subsequent acts of the other party.'

However, the ICJ eventually decided the case without giving a specific critical date. This was a wise move according to Jennings who justified the Court's stance by saying that judges were able to decide the dispute without focusing on one date:[70]

> 'Perhaps the Court was wise not to attempt to a more exact pronouncement, and it may be thought not without significance that they were seemingly able to decide the case by a unanimous verdict without indicating what they regarded as the critical date.'

Brownlie notes that the ICJ repeated its method of not naming a specific date as critical when issuing its decision in the *Temple of Preah Vihear case*[71] between Cambodia and Thailand, even though it considered two dates as material: [72]

> 'Critical dates *eo nominee* did not feature in the judgement in the case of the *Temple of Preah Vihear*, ICJ Reports (1962) 6. However, the Court treated two dates as material:

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[68] The *Minquiers and Ecrehos* case was submitted to the International Court of Justice according to a Special Agreement concluded between France and the United Kingdom on 29th December 1950. It was about title to these two disputed islets and their rocks. After examination of evidence and facts, the ICJ unanimously found that sovereignty over the islets and rocks of the *Ecrehos and the Minquiers* groups fell to the United Kingdom. The ICJ's *Judgement* was issued on 17th November 1953.

[69] Oral argument of Fitzmaurice while advocating the UK's stance before the ICJ, see *ICJ Pleadings, vol. 2*, pp 68-9, also see Jennings, *The Acquisition of Territory in International Law,* p. 32, footnote 4 and p. 33, footnote 1.

[70] Ibid., p. 34.

[71] According to the ICJ Judgement of the 15th June 1962, the Court found that the *Temple of Preah Vihear* was under the sovereignty of Cambodia. Therefore, Thailand was obliged to withdraw the Thai military or police forces, guards or keepers who were stationed at the Temple, or in its vicinity on Cambodian territory.

[72] Brownlie, *Principles of Public International Law*, p. 129, footnote 22.

> 1904, the date of a frontier treaty between France and Thailand, and 1954 when Thailand sent military or police forces to occupy the area.'

A similar approach was taken by a tribunal in 1966 in its verdict in the *Argentine-Chile Frontier* case:[73]

> 'In the Argentine-Chile Frontier case the Tribunal reported that it "had considered the notion of the critical date to be of little value in the present litigation and has examined all the evidence submitted to it, irrespective of the date of the acts to which such evidence relates"[74].'

However, it is suggested that this approach does not take into account the importance of the critical date which has proved helpful in deciding cases involving claims to title derived from not only occupation or cession but also the doctrine of *uti possidetis.*[75] Castellino noted the important impact of the critical date in stabilizing order and peace where title is claimed as a result of *uti possidetis* following hostilities: [76]

> 'With its emphasis on the maintenance of order the doctrine of *uti possidetis* provided modern international law with an ideal conduit to restrict conflict and allow consolidation of the *de facto* situation following hostilities. ...It had the added benefit of ignoring other sources of difference, for example tribunal affiliations or social cohesion, which were more cumbersome in determining the demarcation of territory. This feature is starkly visible in the review of the jurisprudence that continues to emanate from the ICJ,.... Hence, translated into international law, the doctrine required that peace be achieved by a simple decision to allow the aggressor continued possession of territory gained by belligerent occupation, conquest or otherwise, and for the status quo to be maintained from that point onwards. Of course in practice this would lead to a continuously available process, which would ultimately legitimize violence and occupation by force. Thus a central restriction to the doctrine was the emphasis laid on the notion of the "critical date" (Goldie 1963) or the point at which the territorial dimensions of an entity would be considered crystallized. Thus it was believed that the doctrine of *uti possidetis* when combined with the notion of a rigid critical date would ultimately yield a process that would support the preconditions necessary for order.'

Cukwurah notes that, in the context of uti possedetis, the critical date is the date of independence and he suggests that the critical date doctrine can be invoked by new states to avoid the emergence of territorial claims and disputes post-independence.[77]

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[73] Ibid., p. 129.

[74] Ibid., p. 129, footnote 23; See also the Award of this case issued in 1966 at *ILR, vol. 38*, pp. 79-80 and also *RIAA, vol. 16,* pp. 166-167.

[75] Uti possedetis means that new states inherit title and boundaries prevailing at their independence. McHugoexplains: 'When a new state emerges out of a former state, or when a colonial territory becomes independent as a sovereign state, it will inherit the old international boundaries which surrounded the territory. Under the principle known as *Uti Possidetis*,...,administrative boundaries from the colonial period were deemed to be transformed into international frontiers between states which had previously been different provinces (or groups of provinces) all under one sovereignty.', McHugo, 'How to prove title to territory: A brief, practical introduction to the law and evidence', p. 9.

[76] Castellino and Gilbert, J., *Title to Territory in International Law: A Temporal Analysis,* Ashgate Publishing Limited (2003), pp. 11-12.

[77] Cukwurah, *The Settlement of Boundary Dispute in International Law* (1967) pp. 107-108.

The concept of critical date will be utilised in analysing British, Saudi, and Yemeni claims and possible arguments to title derived from occupation, prescription, cession and *uti possidetis*.

4. Title claims made by Saudi Arabia and Yemen

(a) Introduction

Several arguments have been raised in the territorial sovereignty disputes between Saudi Arabia and Yemen, during official negotiations as well as in related literature, for the purpose of emphasising or justifying title claims or for opposing conflicting title claims.

As will be seen below, to support their claims, Yemen claimed they deserved title to `Asir, Jizan, Najran and the Rub' Al-Khali Desert based on historical right and geographical justification (contiguity), as those disputed territories historically and geographically formed parts of *Bilad al-Yemen* or "Greater Yemen".[78] To deny Saudi possession and title over `Asir, Jizan and Najran based on the 1934 Treaty of Taif, Yemen claimed that the Treaty of Taif did not give Saudis a recognised title, but rather suspended the resolution of the dispute, as claimed by Al-Wajih.[79] Alternatively, Yemen claimed that the Saudis' possession of these disputed territories had occurred as a result of conquest following aggression since, according to Yemeni claims, Saudi forces had managed to control these disputed territories in the aftermath of the 1934 Saudi-Yemeni War, before the conclusion of the Treaty of Taif.

As to the territory of the Rub' Al-Khali Desert, Yemen, at first, ignored the 1914 Anglo-Turkish Convention Violet, and therefore territories beyond the line were considered parts of Yemen. Indeed, some areas, for instance Al-Wadiah village located to the north of the Violet line, were even invaded by southern Yemeni forces in November 1969.[80]

In relation to `Asir and Jizan, Saudi Arabia said that they were under an obligation to protect the Idrisis who had ceded sovereignty according to the 1926 Treaty of Makkah to King Abdul-Aziz. To rebut Yemen's claims, the Saudis claimed title to `Asir and Jizan based on the 1934 Treaty of Taif, according to which the Yemenis had waived their title claims to these disputed territories. Moreover, during the 1927-1934 Saudi-Yemeni negotiations, King Abdul Aziz's ancestral or historical rights during the First Saudi State were also raised.

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[78] See chapter 1.
[79] Al-Wajih, A.M.H., *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents,* (1999), p. 233.
[80] Press report, Daily Telegraph, 27 Novermber 1969; and The Times, 18 December 1969.

As to Najran, the Saudis claimed that they had title to Najran as the Yam were subjects of King Abdul Aziz as, during the First and Second Saudi States, the Yam paid allegiance to Saudi rulers.

Regarding the Rub' Al-Khali Desert, the Saudis claimed title over lands located as far south as the 1914 Violet line and as far east as the 1913 Blue line, as those areas were the *dirah*, or homeland, of Al-Murrah, Al-Manhael and Sayyer, occupied by those tribes who paid zakah (religious tax) to the Saudis. Moreover, the Saudis claimed they had acquired title to the eastern frontier in the Rub' Al-Khali Desert during the first Saudi state's expansion, and therefore had ancestral or historical rights to it.

These claims and other possible title acquisition modes will be assessed in the following sections.

(b) Historical title arguments

(i) Historical claims in international law

During the course of the territorial sovereignty dispute between Saudi Arabia and Yemen, both sides have made historical title claims. Brownlie defines historical title as follows:[81]

> 'Invocation of an ancient, original, or historical title. The concept also informs the principle of 'immemorial possession' and reliance upon evidence of general repute or opinion as to matters of historical fact.'

Blum notes that historical title is an exception to the rules of title acquisition modes in international law, as otherwise it may lead to instability in international relations. He states:[82]

> 'Since an historic title is acquired as a result of an encroachment upon the rights of those previously acquired by another State, or the community of States, and develops through a process of adverse holding, it necessarily follows that any claim of this kind must be given the strictest possible geographical interpretations. If historic titles are exceptions to the general rules of customary international law - as it is submitted they are - then it is only reasonable to restrict the scope of such exceptions to the bare minimum justified by the clearest evidence. Such a restrictive interpretation as regards the extent of the area acquired by means of an historic title is indeed imperative.'

Moreover, the same author asserts that it is the state claiming historical title that has the burden of proof:[83]

> 'It is submitted that, owing to the exceptional character of an historic claim and its deviation from the general rules of customary law, the burden of proof in such cases falls

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[81] Brownlie, *Principles of Public International Law,* p. 146.
[82] Blum, *Historical Titles in International Law* (1965) p. 238.
[83] Ibid., p. 232.

> on the State which claims such a title in its favour to prove all those facts which, in its opinion, support the exceptional claim, irrespective of whether the legal proceedings had been instituted by the party alleging such a title or by a party denying the acquisition by its opponent of an historic title. A State raising a claim to rights and titles which would not normally accrue to it under international law must obviously be prepared to prove that it has, in fact, acquired such rights or titles.'

The success of the historical title argument is often linked to actual possession of territory, as Sharma notes:[84]

> 'In a majority of current territorial disputes, competing claims of historic possession and exercise of state functions are involved. Typically, both sides in a dispute assert identical claims. In a number of disputes the conduct of the parties acquiescing in the claims of the adversary has been invoked as an independent or supplementary source of title. This involves the application of technical doctrines such as acquiescence or estoppel.'

Therefore a state proving that it possessed the territory in question would gain title to it notwithstanding the historical title acquired by the adversary state previously holding original title, the latter state losing that title due to acquiescence, or estoppel. Moreover a state having actual possession, besides claiming historical title, is most likely to gain title having the stronger legal stance. This conclusion is found in different evaluations of similar cases, for instance the Colombia-Nicaragua dispute over San Andres and Providencia[85]; Sharma suggested that Colombia had stronger claims to title, including effective occupation established in the nineteenth century:[86]

> 'The central points for consideration in this case are the judicial value of the 1803 Royal Order on which Colombian case is based and the validity of the 1928 treaty which is alleged to have confirmed Colombian sovereignty over the islands. Also to be examined are the attitudes expressed in several treaties cited by both parties. Through this process it will be possible to conclude which of the two states possessed the initial and continued effective sovereignty over the disputed islands and cays.'

The following analysis will show that historical title arguments, if raised by both states, would not on their own have helped either side because the Saudis and Yemenis claimed historical titles to areas that were mostly not in their possession when the disputes arose and when they were to be arbitrated.

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[84] Sharma, *Boundary Dispute and Territorial Dispute,* pp. 265-266.

[85] Sharma explains the dispute: 'Both countries have alleged that the islands and cays are geographically, historically and judicially part of their territory and they have rejected each other's claim in this regard. Colombia, being in possession of them since the 19th century, bases its claims to the islands and cays on the authority of a Royal Order of 1803. The subject matter of this order is disputed between the two countries.' p. 266.

[86] Ibid, p. 267.

In sum, to prove a valid Saudi or Yemeni historical title, each had to prove that they had enjoyed uninterrupted control or possession of the disputed territories over an extended period of time.

(ii) Analysis of Yemeni historical title

There are few sources from which one can identify Yemeni claims to title. During the negotiations with Saudi Arabia from 1992-2000 Yemen proposed a new boundary line based on its historical title, instead of the line of the 1934 Treaty of Taif.[87] Schofield explains the Yemeni claims:[88]

> 'There was always a distinct prospect that Yemeni territorial claims - when they were finally formulated in a way that could be depicted on a map of Arabia - would correspond to the notion of historic cultural identity. So it would ultimately prove during the summer of 1996, some four years into the Saudi-Yemeni border negotiations, when a so-called traditional boundary was claimed by Yemen-traditional that is in as much as it was supposedly based upon the extent of territory which has traditionally been regarded as part and parcel of "natural" or "historic" Yemen. This may have been intended to serve as a maximum claim, which might later be compromised in a negotiated settlement, if and when one arrives'

As a matter of fact, Imam Yahya and his representatives also disclosed the historical title based-argument known as *Bilad Al-Yemen* or 'Greater Yemen' during the first set of Saudi-Yemeni negotiations from December 1927 until the conclusion of the Treaty of Taif in 1934, as is revealed by official Saudi records of the Saudi-Yemeni negotiations.[89]

In the *Sino-Indian frontier dispute*, India claimed historical title and possession of its northern frontiers dating back 3000 years.[90] India was successful in its argument by proving it had immemorial possession of the territory. India was also able to consolidate its title as Jennings explained:[91]

> 'The fundamental interests of the stability of international situations from the point of view of order and peace explains the place that consolidation by historical titles holds in international law and the suppleness with which the principle is applied. In this respect such consolidation differs from acquisitive prescription properly so-called, as also in fact that it can apply to territories that could not be proved to have belonged formerly to another state. It differs from occupation in that it can be admitted in relation to certain parts of the sea as well as on land. Finally, it is distinguished from international recognition - and this is the point of most practical importance - by the fact that it can be held to be accomplished

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[87] Al-Enazy, 'The international boundary treaty "Treaty of Jeddah" concluded between the Kingdom of Saudi Arabia and the Yemeni Republic in June 12th 2000' (2002) *The American Journal of International Law, vol. 96,* p. 161.
[88] Schofield, 'The International Boundary between Yemen and Saudi Arabia' (2000) in Detalle (ed.) *Tension in Arabia: The Saudi-Yemeni Fault Line*, pp. 18-19.
[89] See chapter 2.
[90] Rao, 'The Sino-Indian Boundary Question and International Law' (1962) *International and Comparative Law Quarterly, vol. 11,* p. 411.
[91] Jennings, *The Acquisition of Territory in International Law*, p. 24.

> not only by acquiescence properly so called, acquiescence in which the time factor can have no part, but more easily by sufficiently prolonged absence of opposition…'

Therefore, India had a historical title because it did not claim that that title had been acquired from China, in which case India would have been claiming title by acquisitive prescription; nor did India claim title to territory that was *terra nullius* before she acquired title by discovery and occupation. Rather, India claimed original title without any references to the regime of the territory, as a result of its historical possession of the territory. Additionally, by signing the 1914 Simla Convention, China had proved that it admitted India's title. That is more than mere acquiescence as a condition of the creation of consolidation of historical title.

Yemen's claim can also be contrasted to that of France to the disputed islands of Glorioso, Juan de Nova and Bassas da India and Europe, off the coast of Madagascar.[92] Since 1896 France had been exercising sovereignty. Due to occupation and continued historical possession, Sharma suggests that:[93]

> 'The French title based on occupation and continued exercise of sovereignty will be difficult to challenge. Madagascar's sole basis of title is contiguity, which is not enough by itself to decide the case of title. The French title can be contested only if Madagascar can prove that the disputed islands were consistently administrated as Madagascar dependencies throughout the relevant periods of time.'

Yemen claimed original title that was historical, dating from the time of Greater Yemen in the period 1630-1728. This claim might be viewed as being similar to the claim made by India in that Yemen claimed title due to historical fact and original or historical title to non-*terra nullius* territory. However, there are important differences.

The Ottomans had possession of Arabia's western coast, including Yemen, from 1583.[94] Then during the period of the Greater Yemen in the period 1630-1728, Yemen had possession of `Asir, Jizan and Najran and the southern Yemen, and possibly the Rub' Al-Khali Desert as well.[95] However, the First Saudi State was established in 1750 in Najd, expanding to conquer Hejaz, `Asir, Najran, the Eastern Arabian coast including Hasa, Qatar, Abu Dhabi, hinterlands of Oman, and parts of Yemen until its demise in 1818 at the hands of

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[92] Sharma explains the dispute: 'France has claimed sovereignty over the Islands since 1896, but the government of Madagascar has also claimed them… Madagascar claims that under international law, a state has "a natural right of sovereignty" over nearby islands and that until 1960 France had consistently confirmed the "organic unity" of Madagascar and the islands.' Sharma, *Territorial Acquisition, Disputes and International Law,* p. 262.
[93] Ibid., pp. 268-269.
[94] See chapter 1
[95] Ibid.

the Ottomans who seized the territory of northern Yemen, and `Asir, although not Najran, which was occupied by the Yam tribe.[96] Until 1919 northern Yemen was Ottoman territory. Furthermore, by 1915 the Ottomans had lost `Asir and Jizan to the Idrisi State. Thus, unlike India, Yemen's historical title in relation to the historical possession of Najran was not uninterrupted, having stopped when the Ottomans ceased to possess Najran; nor did Yemen continue to have possession of Jizan and `Asir, as the Idrisi State appeared before Yemen's independence in 1919. At the time of independence in 1919, the Ottomans left title to the territory of northern Yemen only. That is in contrast to the case of India, whose historical title to the northern frontier was saved by Britain. At the time of India's independence, India succeeded to a title which she had herself created long before British colonization began. In sum, Yemen had no continuous possession of disputed territories of `Asir, Jizan and Najran; the possession only existed between 1630 and 1728.

Moreover, when Yemen claimed historical title to `Asir, Jizan and Najran, they did not possess or hold it effectively. Blum noted that if the territory by virtue of historical title claimed was not *terra nullius* then the state claiming historical title should hold it effectively, that being the only way to deduce the acquiescence of the state holding the original title.[97] It is in these terms that Blum explains the British's challenge to the 1898 Venezuelan claim to historical title in the arbitration of the *Venezuela-British Guiana Boundary Dispute*:[98]

> 'Thus, in the arbitration between Great Britain and Venezuela respecting the *Venezuela-British Guiana Boundary Dispute*, the United Kingdom maintained that the potential capacity of a State's expansion should be taken into account only in cases of acquiring titles by occupation (i.e. taking possession of *res nullius*), while in cases involving adverse possession and the infringement of the rights of a previous possessor, the rights of newcomer should be interpreted strictly and should apply to the territory effectively held by it.'

Venezuela contradicted this, asserting that:[99]

> '...when a territory is vacant, the entrant state may enter it as for the whole territory, but when the entry is adverse only the territory effectively held will be acquired thereby.'

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[96] See above.

[97] MacGibbon states: 'The propose of insisting on circumspection in inferring the consent of a state from its inaction is to ensure that such acquiescence correspond accurately with the implied intention of the acquiescing state, and to limit the benefits of acquiescence to claims which have been formulated in such a way that the acquiescing state has or ought to have knowledge of them.' MacGibbon, 'The Scope of Acquiescence in International Law' (1954) *British Yearbook of International Law, vol. 31,* p. 169.

[98] Blum, *Historical Titles in International Law,* p. 239, footnote 2, citing *British-Venezuelan Boundary Dispute,* the British Case (1898), pp. 149-150.

[99] *Ibid*, footnote 3, Blum cites *British-Venezuelan Boundary Dispute*, The Venezuelan Case (1898), p. 228.

Moreover, Saudi possession of 'Asir, Jizan and Najran was recognised by Yemen in the 1934 Treaty of Taif; compare China's recognition of India's title and boundary over the frontier in the 1914 Simla Convention and Nicaragua's recognition of Colombia's title over a disputed territory in the 1928 treaty between Colombia and Nicaragua.[100]

Additionally, Yemen, as a successor to the British in southern Yemen, could not claim that historical title to the Rub' Al-Khali Desert was derived from Britain because, until the 1914 Anglo-Turkish Convention, there was no proved British possession of the disputed territory in the desert.

Therefore, in 1934, or the critical date of this part of the dispute, when the dispute with the Saudis over the southern Yemen frontier arose, there was insufficient long-standing possession by Britain to create historical title to the territory.

What could have supported Yemen's case was the ratification of the 1914 Anglo-Turkish Convention, which frankly stated the Ottoman title waiver to areas beyond the Violet line and accepting that line as the border of Najd (then an Ottoman territory becoming a Saudi territory with Britain's recognition in favour of King Abdul Aziz in the 1915 Anglo-Saudi Treaty). This is based on the converse of the finding of the International Court of Justice in the Belgium/Netherlands case: because Belgium had not ratified a treaty signed in 1892 giving up the two plots in question to the Netherlands, the Court rejected the Dutch claim that she had acquired title to the plots. It found that the terms of the 1892 treaty admitted Belgium's undisputed title to the plots, but because the treaty was not ratified, Belgium's transfer of title had not been activated. The Court summarised it thus:[101]

> 'The Court notes further that, in an unratified Convention between the two States going back to 1892, Belgium agreed to cede to the Netherlands the two disputed plots. This unratified Convention did not, of course, create any legal rights or obligations, but its terms show that, at that time, Belgium was asserting its sovereignty over the two plots and that the Netherlands knew it was so doing. The Netherlands did not, in 1892 or at any time thereafter until the dispute arose between the two States in 1922, repudiate the Belgian assertion of sovereignty. The Court finds that Belgian sovereignty established in 1843 over the disputed plots has not been extinguished.'

However, to claim that possession started as of the 1913-14 Conventions does not support historical title due to the fact that title would then be based on cession or conventional treaty,

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[100] According to this 1928 treaty, Nicaragua recognised title to San Andres and Providencia as being under the sovereignty of Colombia while the latter recognised the sovereignty over the Mosquito Coast in favour of Nicaragua. See Sharma, *Boundary Dispute and Territorial Dispute,* pp. 266-267.
[101] *Case concerning Sovereignty over Certain Frontier Land* (1959) ICJ Reports.

and not original possession. Treaty-based title prevails over historical title in cases of conflict between the two, unless there is estoppel. The International Court of Justice, in its Judgement in the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria*, added a restriction to historical title claims to the effect that no state is allowed to ignore or challenge title acquired by treaty solely by seeking an argument of historical consolidation of title. This was because the Court considered that historical title theory is very controversial and cannot replace customary modes:[102]

> 'The Court notes that theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law. It further observes that noting in the Fisheries *Judgement* suggests that the historical consolidation" referred to, in connection with the external boundaries of the territorial sea, allows land occupation to prevail over an established treaty title.'

It is noted that this historical title would not be in conflict with the 1914 Anglo-Turkish Convention but rather it would be supported by the application of the texts of the two colonial treaties which registered that the Ottoman (as a predecessor of Saudi Arabia) waived title claims to the areas beyond the Blue and Violet lines. However, by the signature of the 1914 Anglo-Turkish Convention, Britain created a line that did not conform with Yemen's historical title claims as depicted on Al-Dhamari map[103]; Yemen's historical territory included the whole of Rub' Al-Khali Desert up to the borders of Najd and Qatar on the Persian[104] Gulf. Schofield suggests that Yemen's case was exaggerated and did not reflect the facts of the colonization period.[105]

Furthermore, the British subsequently abandoned the Violet line, substituting the so-called 1955 Independence line.[106] Therefore Yemen can only claim historical title to areas south of the 1955 line. Abandonment meant that Yemen's alleged historical title to those areas was lost, unlike in the case of India, whose title was preserved by Britain. As Oppenheim says:[107]

> 'Dereliction (or abandonment, or relinquishment) as a mode of losing territory corresponds to occupation as a mode of acquiring it. Dereliction frees a territory from the sovereignty of the present owner-state. It is effected through the owner-state completely abandoning territory with the intention of withdrawing from it for ever, thus relinquishing sovereignty over it.'

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[102] *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria* (2002) ICJ Reports, para. 65.
[103] See Appendix 2.4.
[104] Arab states have named Arab Gulf in recent decades.
[105] See chapter 1 for Schofield's remarks on Greater cultural and historical Yemen.
[106] See chapter 2, see also Appendix 2.10.
[107] Jennings and Watts, *Oppenheim's International Law*, p. 717.

Although the 1955 line was declared after the 1934 critical date, the British declaration is not discounted because it was Britain who voluntarily decided to give up its alleged title. Brownlie says:[108]

> 'Of course, evidence of acts and statements occurring after the critical date may be admissible if not self-serving, as in the case of admissions against interest.'

The location of the 1955 line was a clear divergence from the Violet line, possibly gave the Saudis a tacit recognised title to those areas in question.[109]

A second indication that British abandonment stripped Yemen of its alleged historical title to areas north of the 1955 line is the similarity between the Yemeni's alleged historical title lost by abandonment and the Danish abandonment of sovereignty over the *Nicobar Islands*[110] in 1868, which let Britain acquire sovereignty over those islands in 1869. Marston examined the history of conflicting sovereignty claimed by different European powers regarding the islands. He writes:[111]

> 'In conclusion, the evidence suggests that in international law the story of the Nicobars was one of abandonment of territorial sovereignty in the strict sense; by December 1868 Denmark had not only physically abandoned the islands but had fulfilled its intention to relinquish sovereignty over them and had made this known to Britain through diplomatic channels. The informal 'cession' was a cosmetic camouflage so contrived as not to appear to challenge Britain's opinion- not shared by the Danish Government- that sovereignty still lay with Denmark.'

Based on this, and by analogy, Yemen can only claim historical title to lands to south of the 1955 line if it had managed to exercise physical control over the territory since the time of Greater Yemen, or some time after that, provided that the period of possession before the critical date in 1934 was long enough to conform to historical possession. The 20-year period of possession of the territory was too short to form historical possession. The International Court of Justice held in the dispute between Cameroon and Nigeria that a period of possession lasting 20 or 30 years is too short to form a basis for claiming historical title:[112]

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[108] Brownlie, *Principles of Public International Law*, p. 128.
[109] Read below subsequent conduct: recognition, acquiescence and estoppel.
[110] Marston describes the islands: 'In the Indian Ocean north-west if the Indonesian island of Sumatra lies a chain of islands called Nicobars, which are part if the Andaman and Nicobar Islands, a Territory of the Union of India. The Nicobars extend over nearly 200 miles from north-west to southeast and comprise three parts.' See Marston, 'The British acquisition of the Nicobar Islands, 1869: A possible example of abandonment of territorial sovereignty' (1998) *British Yearbook of International Law, vol. 69,* p. 245.
[111] Ibid., p. 265.
[112] *Judgement of Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria* (2002) International Court of Justice Reports, para. *65.*

> 'The facts and circumstances put forward by Nigeria with respect to the Lake Chad villages concern a period of some 20 years, which is in any event far too short, even according to the theory relied on by it. Nigeria's arguments on this point cannot therefore be upheld.'

In conclusion, an arbitral tribunal would not be expected to accept any of the Yemeni historical claims to the territory of the Greater Yemen.

(iii) Analysis of Saudi historical title

The Saudis also made historical title claims to the disputed territories. They raised an argument to claim title to '*dirah*' or tribal hinterlands, including those of the Al-Murrah, Sayer, Manahil, and other nomadic tribes living in the huge territory of the Rub' Al-Khali Desert extending from the Saudi-Qatar frontier in the east, to the Saudi-Abu Dhabi-Oman frontier in the south-east of Arabia, and to the Saudi-southern Yemeni border in the south. In negotiations with the British in 1934-35, the Saudis claimed title to Al-Murrah lands and other tribes' territories or 'dirahs' based on allegiance.[113] King Abdul Aziz tracked the allegiance of the Al-Murrah tribe since the days of First and Second Saudi states. He found that their allegiance was to Saudi Arabia, indicating that Saudi Arabia therefore had historical or original title over the territories beyond the Blue line (1913 Anglo-Turkish Convention) in 1934.[114]

This Saudi argument based on historical title was used again in the Anglo-Saudi Arbitration in the *Buraimi Oasis Arbitration* in 1955. The Saudi Memorandum reads:[115]

> 'The Contentions of Saudi Arabia:
> 20. It is submitted that, for the purpose of this proceeding, it is sufficient that the rulers of the House of Sa'ud were in fact independent, and were so dealt with by the British, throughout that period. Further, from the Treaty of Darin in 1915 [1915 Anglo-Saudi Treaty] to the Arbitration Agreement of 1954, the British Government has expressly accepted the concept that Saudi Arabia's territories are those of the King and his forefathers. It therefore accords both with reality and with the long-established attitude of the Parties to consider the nineteenth-century Saudi State as fully competent to acquire and hold sovereign rights.
>
> 21. ...it is the contention of Saudi Arabia that the Saudi State originally acquired sovereignty over the territories here in dispute prior to the year 1800; and that since that time it has manifested over them an authority sufficiently effective and continuous, considering the relevant circumstance, to maintain its rights in full vigour. Even if there were intervals in which its control became attenuated, in particular for a time after 1873, it is Saudi Arabia's view that these were not such as to impair its historic title: there were no

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[113] *Confidential Memorandum* on 'The Frontier between Saudi Arabia and the South Arabian Protectorate', dated 13th June 1966, FO 371/185273.
[114] Ibid.
[115] *Memorial of the Government of Saudi Arabia, vol. 1*, 31st July 1955 in the *Arbitration for the Settlement of the Territorial Dispute between Muscat and Abu Dhabi on One Side and Saudi Arabia on the Other Side,* pp. 483-484. The Government of United Kingdom represented the side of Abu Dhabi and Muscat in the arbitration.

> *animus reliquendi* and no other State during those intervals established for itself a comparable position in the disputed territory... it is the submission of Saudi Arabia that the actions of King Abdul Aziz were in fact and in law a resumption of an ancestral authority never abandoned; but should it be necessary, Saudi Arabia would contend that events since the accession of His late Majesty are in themselves sufficient to support Saudi Arabia's claims under relevant principle of law.'

It is suggested that the historical title arguments that could have been raised by Saudi Arabia in 2000 are less persuasive and less admissible than the Yemeni arguments for various reasons.

Following the International Court of Justice's Judgement in 2002 in the *Cameroon/Nigeria* case that twenty or thirty years of possession was too short to acquire a historical title, Saudi Arabia (like Yemen) would have had to prove that it had been exercising continuous peaceful and uninterrupted possession over the claimed territory beyond the Blue and Violet lines over a significant period of time up until the critical date in 1934. It is noted that Saudi Arabia claimed historical title in 1934, just twenty years after the signature of the 1914 Anglo-Turkish Convention delimiting those areas, even though the validity of this treaty was controversial.[116] Moreover, this was just seven years after Saudi Arabia became recognised as an independent state in accordance with the Anglo-Saudi Treaty of 1927, and nineteen years after Britain recognised Abdul Aziz as independent ruler of Najd.

Another reason for doubt as to the soundness of the Saudi historical title argument is the conflict between the Saudi claim on the one hand, and the title and boundary created by the 1914 Anglo-Turkish Convention on the other. It is noted that international law does not allow historical title that is inconsistent with title decided by international treaty.[117] It is clear that the Saudi historical title claim goes beyond the areas is had title to under the 1913-14 Conventions and therefore is arguably inadmissible.

Moreover, it is noted that Saudi Arabia, in the *Buraimi Oasis Arbitration*, claimed that the possession was historical, original and continuous, despite being interrupted in the years between demise of the First Saudi State in 1818 and appearance of the Second Saudi State, and between the end of the Second Saudi State and the emergence of the Kingdom of Saudi Arabia.[118]

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[116] See chapter 3.
[117] See *Judgement of Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria* (2002) ICJ Reports, para. *65*.
[118] See chapter 1.

Under international law, a condition of claiming historical title to a territory is the continuous possession of the territory that is not challenged by any other states with interests in or claims to that territory. This was stated by the International Court of Justice in the *Fisheries Case* in which concerned states had shown acquiescence for over 70 years, resulting in Norway's winning the case.[119] However, Saudi Arabia's possession of the Rub' Al-Khali Desert frontier was unlike Norway's possession of the waters of Lopphavet, in that Saudi possession of the territory had been interrupted twice. Thus the Saudi claim is not admissible.

It is understood that a state, under international law, can retain title if it is proved that, despite the withdrawal from a territory, the title to that territory was saved due to the non-existence of *animus reliquendi*; this requires that the entity of the state endures (in contrast to the Saudi entity, which did not) so that the title is preserved by the existent state. In fact, the Ottoman Empire, as successor state, did just the opposite when she gave up title claims to those areas claimed by Saudi Arabia through historical title and accepted the delimitation of them based on the 1913-14 Anglo-Turkish Conventions. This was, by way of illustration, contrary to the British saving of India's title to its northern frontier with China:[120]

> 'The various sovereign acts performed by the British and later, the Indian authorities were more than adequate. India can legitimately claim an original title, based on historical and immemorial right, which has been made absolute over the centuries by a process of historical consolidation.'

Additionally, the 1913-14 Anglo-Turkish Conventions, even if they were not international dispositive treaties[121], proved that the Ottomans admitted that they had no sovereignty over the Rub' Al-Khali Desert or that they waived it. Thus when King Abdul Aziz took the place of the Ottomans in 1915, he succeeded to all the rights enjoyed by the Ottomans and could not claim any rights that the Ottomans lacked or had waived. It is true that the British, in Article 1 of the 1915 Anglo-Saudi Treaty[122], recognised King Abdul Aziz's authority within his forefathers' lands; yet it is hard to rely on this recognition because it did not extend to the Rub' Al-Khali Desert frontier nor are there any specific limits on areas where the First and Second Saudi States' rulers enjoyed actual possession, though it is known that during the

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[119] *Fisheries Case (UK/Norway)* (1951) ICJ Reports.

[120] Rao, 'The Sino-Indian Boundary Question and International Law' (1962) *International and Comparative Law Quarterly,* vol. 11, p. 410.

[121] See chapter 3.

[122] Article I reads: 'The British Government do acknowledge and admit that Najd, Al Hasa, Qatif and Jubail, and their dependencies and territories, which will be discussed and determined hereafter, and their ports on the shores of the Persian Gulf are the countries of Bin Saud and his fathers before him…' Text of the treaty is at Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis*, p. 372.

First Saudi State they ruled `Asir, Najran, parts of northern Yemen and parts of southern and eastern Arabia.[123] The Second Saudi State, as the Saudi Memorandum stated, also ruled the Buraimi Oasis, located on the eastern frontier of the Rub' Al-Khali Desert.[124] But to what extent the First and Second Saudi States managed to possess these territories is unknown. This is an obvious obstacle to the Saudi claim to historical title to the Rub' Al-Khali Desert.

Moreover, Saudi Arabia could not establish stable possession over the Rub' Al-Khali Desert for a long period of time and any Saudi attempts to establish an existence were protested by Britain. This can be contrasted to Norwegian activities in the *Anglo-Norwegian Fisheries Case*.[125]

Even if there was a Saudi presence, it lasted less than 30 years. This is based on information revealed from a confidential document stating that during the 1950s and 1960s there were exchanged protests between the Saudi and British Governments due to oil interests and other activities in areas under negotiation between 1935 and 1955.[126] For instance on the 27th January 1954, Saudi Arabia wanted to conduct oil research at point 17.22N 47.16E. However, the British and Aden officials excluded the Saudi Government's official and their American oil company's group (ARAMCO). The Saudi Government protested the British denial of Saudi-American oil group on the 10th February 1954.[127] This shows that the Saudis did not enjoy undisputed possession of one of those areas.

The Saudis, in November 1954, protested against the British establishment of the I.P.C geological party at Thamud (51.30E/18.03N).[128] The British stated to the Saudis that the Thamud area was part of their Protectorate, but the Saudis did not accept that claim, according to their note dated the 4th April 1955.[129] So, in neither place did the Saudis manage to establish a smooth historical presence, nor deny the existence of the adverse British possession of the disputed territory of the Rub' Al-Khali Desert. Furthermore, in October

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[123] See chapter 1.
[124] *Memorial of the Government of Saudi Arabia*, vol. 1, 31st July 1955 in the *Arbitration for the Settlement of the Territorial Dispute between Muscat and Abu Dhabi on One Side and Saudi Arabia on the Other Side.*
[125] *Fisheries Case (UK/Norway)* (1951) ICJ Reports.
[126] PRO, FO 371/185273
[127] Ibid.
[128] Ibid.
[129] Ibid.

1955, the Saudi Government protested the British prevention of official Saudi oil activities at point 17.42E/48.35E. The Saudi party quit the area, leaving their equipment.[130]

When the Saudis, on the 22nd July 1957, protested against the British establishment of four new posts at Shahr, Idim, Masmars and Harekhat, the British replied, on the 26th August 1957, stating that those areas were south and east of the 1955 Independence line and therefore were, from a British point of view, 'indisputably within the territories of the Sultan or the Aden Protectorate'.[131]

On the 16th May 1958 the Saudis again complained about the presence of the I.P.C. party at point 52E/18.14N. Additionally, they protested the existence of a British Protectorate Force at Wadi Qaafez at point 47.9E 17N. However, the British realised:[132]

> 'The co-ordinates given for Wadi Qaafez would have placed it on the Saudi side of the line [the 1955 Independence Line] though enquiries in Aden revealed that its actual position was 16.56E/47.26E i.e. in Protectorate territory. We were thus able to reject the Saudi Note on both counts [British presences at 52/18E and at Wadi Qaafez]'

Once again on the 4th July 1962, the Saudis protested British presence at four of what they called Saudi territories: Mugshin, Thamud, Sanaw, and Rakhout.[133] But the British did not accept the Saudi protests because those areas were within the usual lines: the Violet and 1955 lines.[134] The Saudis protested because those areas were north of Hamza line.[135]

The Saudi Government, due to its inability to prove an uncontested presence over a long period of time, did not have strong historical title claims to the Rub' Al-Khali Desert, as its presence was disputed during the 1950s and 1960s, less than forty years prior to 2000, which is too short a period of time to claim historical possession.

As to the disputed territories of Jizan `Asir and Najran, on various occasions Saudi writers, such as Al-Zulfa, asserted the existence of historical ties of Najran, `Asir and Jizan with

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[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Ibid.
[135] See chapter 2.

Saudi Arabia as early as the First Saudi State.[136] Between 1927 and 1934 the Saudi negotiators on various occasions claimed historical title to `Asir, Jizan, and Najran.[137]

Yet, in 1927, the critical date when the Saudi-Yemeni dispute crystallised, there had been no immemorial possession by Saudi Arabia of Najran.[138] The Saudi possession of Najran started in around 1800, during the First Saudi State, but ceased with the demise of that state in 1818, as was the case in the Rub' Al-Khali Desert, Burami Oasis and other territories ruled by the first Saudi state. Therefore Saudi possession was interrupted in 1818. Although Al-Zulfa reports ties between the second Saudi state's ruler, Faisal bin Turki, and Yam chiefs, that does not indicate actual possession.[139] Nonetheless, even on the assumption that ties were enough to give the Second Saudi State title over the Yam by virtue of allegiance, as understood from those letters, again the demise of the Second Saudi State led to loss of title and to the loss of any grounds to claim inherited historical possession over the territory of Najran.

Moreover, the Saudis could not claim rights that their predecessor, the Ottomans, did not have.[140] Additionally, in 1915 the Idrisi State's ruler, Sayyed Mohammed bin Al-Idrisi, was recognised by Britain. Abaza[141] reports that the Yam formed one of the fighting forces of the Idrisi Army, attacking the Ottoman territory of northern Yemen.[142] Therefore Saudi Arabia could not have claimed historical title to Najran in 1927 because in 1915 another state, the Idrisi State, had sovereignty over it. Therefore, if one relies on 1927 as critical date of the Saudi-Yemeni dispute over Najran, there was no chance for Saudi to convincingly claim historical title.

Similar arguments apply to `Asir and Jizan. The First Saudi State included these territories but they were lost to the Ottoman Empire in 1818. The Ottomans had possession of `Asir and Jizan until the First World War when they lost sovereignty over some parts of those territories as a result of the Idrisi revolt. When the Ottomans withdrew from those parts of

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[136] Al-Zulfa, *Asir during the Reign of King Abdul Aziz: Its Political, Economic, and Military Role in Building of the Modern Saudi State (In Arabic)* (1995) p. 174-175.
[137] See chapter 2.
[138] See chapter 1.
[139] Al-Zulfa, p. 174-175.
[140] Ibid., p. 173.
[141] Abaza, *Britain's Policy in Asir During World War I (In Arabic)*, p. 46.
[142] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis*, p. 137. He writes ' In 1910 `Asir was detached from Yemeni administration and reconstituted as a completely separate administrative unit'.

`Asir not ruled by the Idrisi State in 1918-19, they gave powers to Al-`Aid family.[143] It was not until 1919, when the Saudi army invaded Al-Aid's territories in `Asir and annexed them by force, that Saudi Arabia had possession of parts of `Asir again. Therefore, as Saudi Arabia had gained power over those parts of `Asir ruled by Al-Aid only in 1919, there was insufficient time before the critical date in 1927 to claim historical Saudi title.[144] Similarly, the Saudis gained control over the parts of `Asir under the control of the Idrisi in 1926, less than one year before the Saudi-Yemen negotiations started. As 1927 is the critical date, this shows that there was no Saudi historical title over the two territories.

However, if one considers the critical date as the time when the Yemenis resumed claims to Najran and other disputed territories in 1992 when the final negotiations started, a different answer may prevail. Between 1934 and 1992 the Saudi demonstrated continuous possession of the dispute territories of `Asir, Jizan and Najran, lasting for almost 70 years, and that may have given Saudi Arabia grounds to claim historical title. But the peaceful possession over Najran by Saudi Arabia could not have been established unless Yemen had given up claims to Najran according to the 1934 Treaty of Taif, which forms the base of Saudi title.

Based on this analysis, there were no coherent Saudi-Yemeni historical title arguments. If the two states had decided to go to arbitration in 2000, the tribunal would have been expected to rely on other grounds to decide the title claims to `Asir, Jizan Najran and the Rub' Al-Khali Desert frontier.

(c) The contiguity argument

In addition to its historical title argument, Yemen claimed that it derived title to the disputed territories of `Asir, Jizan, Najran and the Rub' Al-Khali Desert on basis of contiguity, which refers to the idea that a state in closer proximity to a disputed territory has a better title.[145] Contiguity is not a new argument in international practice; Sharma explains that, in the

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[143] See chapter 1.

[144] In this area, Saudi Arabia could not claim to be a successor state to the Ottoman Empire, unlike in Najd, because it was Al-Aid who inherited sovereignty from the Ottomans in 1918-19, on the assumption that they formed a state within international law's conditions of statehood.

[145] Sharma, *Territorial Acquisition, Disputes and International Law* (1997), pp. 51-52. Yemen has also claimed geographical unity as a basis for its title claim to Hanish Island, disputed by Eritrea, though the Award stated that contiguity was not an 'absolute principle'. Donovan says 'Geographical boundaries were seen in the maritime context in the case between Yemen and Eritrea. Yemen argued that the group of disputed islands in the Red Sea should be viewed as one geographical entity, based upon "the principle of natural or geophysical unity." In the final award, the International Court of Justice stated that the principle of boundaries based upon natural geographical principles is "not an absolute principle"'; Donovan, 'Surinam-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis' (2003) *Journal of Transnational Law & Policy, vol. 13,* p. 74.

nineteenth century, unappropriated territories were often claimed according to geographical proximity[146] and that the contiguity principle was raised to claim title to *terra nullius*:[147]

> '...during the [nineteenth] century the grounds of contiguity and territorial propinquity were invoked to assert claims to terra nullius. Such claims were advanced because the colonizing states found it inconvenient - due to long distances, the vast size of the territory involved and the scarcity of resources - to establish effective physical control over the territory. This difficulty was felt even when their initial basis of claim was conjoined with an inchoate title.'

Moreover, in the *Island of Palmas Case;* Arbitrator Huber said:[148]

> 'The principle of contiguity is not a legal mode of deciding issues of territorial sovereignty since it is imprecise and if applicable would lead to arbitrary results'

Huber went further, preferring a display of activity giving inchoate title (sole discovery without effective occupation) to contiguity; Sharma comments on the award:[149]

> '[Huber] stated that even an inchoate title arising from a first display of activity would "prevail over any claim which, in equity, might be deducted from the notion of contiguity.'

However, in the *Land, Island, and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*[150] a chamber of the Court held that the Meanguerita island was a 'dependency' of the Meanguera island as it was small and in close proximity to the latter. Thus, it considered them as one territorial unit.

Although other judgements have accepted contiguity, they have all emphasized that contiguity must be combined with a minimum level of manifestation of state sovereignty. For instance, in the *Eastern Greenland Case* the Permanent Court of International Justice stated that:[151]

> 'The tribunal has been satisfied with very little in the way of actual exercise of sovereign rights, provided that the other state could not make out a superior claim.'

In this regard, Sharma writes:[152]

> 'It can be concluded that contiguity or continuity of territory could be valid consideration under international law only within the general framework of the process of effective occupation. At best, in suitable contexts, contiguity or proximity may raise a presumption of fact or create *animus occupandi* that a particular state is exercising or displaying state authority over the adjoining or proximate territory "in which there is no noticeable impact

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[146] Ibid, p. 52.
[147] Sharma, *Territorial Acquisition, Disputes and International Law*, p. 53. See also Shaw, *Title to Territory in Africa* (1986) p. 49.
[148] See *The Island of Palmas case Award*, *RIAA 2*, pp. 854-855, and Sharma, ibid., p. 54, footnote 92.
[149] Sharma, ibid., p. 55.
[150] (1992) ICJ Reports, p. 570, para. 356; See also Sharma, *Territorial Acquisition, Disputes and International Law*, p. 56, footnote 100.
[151] *Eastern Greenland Case* (1933) PCIJ Reports, *ser. A/B, no. 53*, p. 46.
[152] Sharma, pp. 59-60

> of its state activities". But this presumption can be rebutted if the status quo goes on indefinitely without any evidence of some manifestation of sovereignty over the entire territory claimed, or if some display of state authority during the period of time when it is ordinarily expected is non-existent, or when another state comes up with superior evidence of a continuous and peaceful display of sovereignty over the same territory.'

From this analysis it appears that Yemen cannot rely on this argument in relation to `Asir and Jizan as these territories were not *terra nullius* as discussed above. As for Najran, Yemen could only argue contiguity if Najran was *terra nullius*, which most likely it was not.[153] In the case of the Rub' Al-Khali Desert, it could have been possible to apply the contiguity argument if it was considered to be *terra nullius*.[154] However, none of these territories are remote from Yemen and therefore Yemen cannot argue that it was unable to exercise effective physical control. Indeed, Yemen's troops invaded Najran before the Saudi-Yemeni war. In the Rub' Al-Khali Desert, oil companies and the Saudi and Yemeni governments have been increasingly active[155], indicating that the area in not inaccessible. Thus the inability to establish effective occupation, a condition of contiguity, did not exist.

It is also hard to favour the Yemeni claim of contiguity because of the Rub' Al-Khali Desert is distributed equally along each state's territory. This can be contrasted with the dispute over the Falkland Islands, which are closer to Argentina than to Great Britian. Despite this relative proximity, Gravelle stated that Argentina only tacitly argued title based on contiguity because it is not accepted as a mode of title acquisition. Gravelle believes contiguity will not help Argentina:[156]

> 'Argentina has impliedly raised contiguity as a basis for its claim to sovereignty over the Islands when stressing the physical proximity of the Islands to Argentina. Not raising contiguity directly may be because it is the most controversial basis for Argentina's claim. In fact, contiguity has generally not been recognized in international law as a mode of acquiring territory. Assuming *arguendo* that contiguity is a proper mode of obtaining sovereignty, it does not support Argentina's claim. The Islands are an identifiable independent unit lying 500 miles from Argentina. Even considering that there is some value to the Islands in maintaining certain ties to Argentina, such as an economic relationship, the Islands are too remotely located to support a claim of sovereignty by contiguity.'

On this basis, it would appear that contiguity is not the appropriate argument for Yemen's claim to the Rub' Al-Khali Desert.

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[153] See above.
[154] As discussed above, there are different opinions over whether the Rub' Al-Khali Desert was in fact *terra nullius.*
[155] See Appendix 2.10
[156] Gravelle, 'The Falkland (Malvinas) Islands: An International Law Analysis of the Dispute between Argentina and Great Britain' (1985) *Military Law Review, vol. 107,* p. 27.

(d) Conquest

(i) Conquest as a means of territorial acquisition in international law

Conquest was once a valid way of acquiring territory under international law although, as will be seen, it is no longer so. Jennings counted conquest amongst traditional modes of territory acquisition:[157]

> '[T]here are five 'modes' by which territorial sovereignty can be acquired: (1) *occupation*, *viz.* of territory which is not under the sovereignty of anyone; (2) *prescription*, by which title flows from an effective possession over a period of time; (3) *cession*, or the transfer of territory by a treaty provision; (4) *accession* or *accretion*, where the shape of land is changed by the processes of nature; and finally, (5), *subjugation* or, if you prefer the older terminology, *conquest*.'

Oppenheim defines 'conquest' thus:[158]

> 'Subjugation, that is the acquisition of territory by conquest followed by annexation, and often called title by conquest, had to be accepted into the scheme of modes of acquisition of title to territorial sovereignty in the period when the making of war was recognised as a sovereign right, and war was not illegal.'

Conquest is defined as a 'right' by Korman thus: [159]

> 'The right of conquest may be defined as the right of the victor, in virtue of a military victory or conquest, to sovereignty over the conquered territory and its inhabitants.'

Conquest played an important role in title acquisition to territories in the nineteenth century by European states who considered lands under tribes or natives to be *terra nullius* as explained above.[160] Shaw emphasises the role of conquest through history as being:[161]

> '... Historically important and certainly operative in the nineteenth century as a method of acquiring territory.'

However, the Permanent Court of International Justice in the *Eastern Greenland Case*, limited the operation of conquest to the loss of sovereignty enjoyed only by states, not by tribes or lands considered *terra nullius*:[162]

> 'Conquest only operates as a cause of loss of sovereignty when there is war between two States and by reason of the defeat of one of them sovereignty over territory passes from the loser to the victorious State. The principle does not apply in a case where a settlement has been established in a distant country and its inhabitants are massacred by the aboriginal population.'

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[157] Jennings, *The Acquisition of Territory in International Law*, pp. 6-7.
[158] Jennings and Watts, *Oppenheim's International Law*, pp. 698-699.
[159] Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996) p.8.
[160] Ibid.
[161] Shaw, *Title to Territory in Africa*, p. 49.
[162] *Eastern Greenland Case* (1933) PCIJ Reports, ser. A/B, no. 53, p. 47.

Title is established by annexation if the defeated state refuses to sign a treaty for any reason or if the conquest consumed all of the defeated state's territory:[163]

> 'Title by conquest is formally complete when the conquering state unilaterally annexes the conquered territory, extending its own civil administration over it and incorporating it into the body of its own state territory.'

Annexation[164] of territory while military operations between two states forces are still active can also occur.[165]

Korman described the conditions of a successful conquest as follows: [166]

> 'The only requirement of fact to be fulfilled before the title by conquest can be established is that the territory must be in the effective possession of the conqueror. Legally, this is presumed to have occurred when the conquest or military occupation is followed either by the complete extinction of the political existence of the conquered state (i.e. *debellatio*); or by the cession of the conquered territory through a treaty of peace (when the defeated state remains in existence to make it); or by the practical acquiescence of the defeated state in the conquest, as would be evidenced by its failure to prolong the war for the purpose of recovering it (even if 'from pride or obstinacy' it refuses to conclude a formal treaty of peace with the victor).'

Examples of conquest are the British proclamations of the 24th May 1900, declaring its annexation of the Orange Free State, and of the 1st September 1900, annexing the Transvaal. It is noted that the British proclamations were made while Boer forces were still resisting the British victorious forces.[167]

However, as was seen in chapter 3, the right to wage war was gradually prohibited in the first half of the twentieth century, leading to conquest as a mode of acquisition of title to territory becoming unlawful as well:[168]

> 'Conquest was a recognised and important basis for title until early years of [the twentieth] century. It was now well established that the "territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force" contrary to Article 2 (4) of the United Nations Charter.'

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[163] Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice,* p. 9.

[164] Sharma divides annexation into two types, one after peaceful arrangement and the other after war and conquest: 'Annexation can be divided into partial and total annexation. Both can take place during a war as well as in peace time, resulting in varied legal effects.' Sharma, *Territorial Acquisition, Disputes and International Law*, p. 144 and footnote 453

[165] Ibid., Sharma indicated two examples: Israel annexation of Golan Heights and the West Bank of Jordan in 1967 after the six day war, and the Iraq annexation of Kuwait in August in 1990 when the United Nations Security Council declared that the Iraq annexation over Kuwait was 'null and void' as UNSC Resolution No. 662 dated 9th August 1990.

[166] Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice,* pp. 8-9.

[167] Sharma, ibid., p. 144.

[168] Harris, *Cases and Materials on International Law* (1998) p. 218.

One case which demonstrates the prohibition of conquest as a legitimate mode of acquisition in modern international law is Iraq's invasion of Kuwait, condemned by UN Security Council Resolution 660 of the 2nd August 1990, and considered to be a null and void annexation by Resolution 662 of the 9th August 1990.[169] More recently, Judge Koroma, in the *International Court of Justice's Advisory Opinion on the Wall*, ruled against the building of the Israeli wall in the West Bank on the grounds that it constituted conquest, or illegal annexation, which has been outlawed by international law.[170] Koroma writes:[171]

> 'Thus according to contemporary international law, territorial changes can only be brought about by peaceful means. Territorial regulation brought about by force against the wishes of the local population cannot be recognised as legal. From the point of view of existing law, debellatio (declaration of annexation of a captured territory from the losing state at end of war) can no longer be seen as a legal basis of acquiring territory either by its contests or by manner of acquisition'.

(ii) The Yemeni conquest argument[172]

The conquest argument was postulated by Yemen. It arose when President Ali Salih of Yemen, in an interview given to El-Rayyes[173], claimed that territories recognised as 'Saudi' according to the 1934 Treaty of Taif, had been taken by the Saudis by force. Conquest was also raised by the Yemeni jurist Al-Wajih to argue that Saudi title over `Asir, Jizan and Najran had been gained as a result of an 'illegal' war.[174] According to this view, the 1934 Saudi-Yemeni War occurred at a time when the state's right to wage war had been banned by several international agreements. Al-Wajih argues:[175]

> 'The military actions taken by the House of Saud in the period 1921-1934 allowing them to occupy several Yemeni regions are considered illegitimate actions and bear no legal effects.'

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[169] Sharma, ibid, p. 144.

[170] See the Separate Opinion of Judge Koroma in the *Legal Consequences of the Construction of a Wall in the Occupied Palestanian Territory*; see http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm. He stated: 'The construction of the wall has involved the annexation of parts of the occupied territory by Israel, the occupying power, contrary to the fundamental international law principles of the non-acquisition of territory by force'.

[171] Koroma, 'The Settlement of Territorial and Boundary Disputes in Central Africa' (1974) *Unpublished M.Phil. Thesis, King's College, London,* p. 86. Koroma saw debellatio as a condition of conquest: 'Debellatio can only arise as the result of a legal war which cannot be said of the conquests of African territories. Such annexation resulted in the sovereignty of the aforementioned territories (Matabeleland, Mashonaland, and Madagscar in Africa) being wiped out, as a situation similar to the conquest of Poland in spite of the undertakings of the Treaty of Vienna 1815. This, it would appear, was in violation of the principle of the legality of conquest as a mode of acquiring territorial title.' p. 83.

[172] See coercion argument, chapter 3.

[173] El-Rayyes, *Southern Wind: Yemen and its Role in Arabia (1990-1997)* (1998) p. 140.

[174] For a discussion on when the use of force was prohibited in customary international law, see the section on coercion in chapter 3.

[175] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents (in Arabic),* p. 235. Another Yemeni writer, Al-Nono shares this view: Al-Nono, *The Yemeni-Saudi Boundary Dispute* (in Arabic) (1994) p. 51.

Al-Wajih, citing from Jum`a, supports his conclusion by making reference to a decision made by the Conference of American States on the 15th January 1890, which considered conquest or subjugation to be a violation of America's Law.[176] He also refers to the resolution of the Assembly of the League of Nations dated March 1932[177], pertaining to a dispute between Japan and China.[178] In addition, Al-Wajih argues that the Saudi use of force was illegal because it was in violation of the 1928 General Treaty for the Renunciation of War, also known as the Kellogg-Briand Pact.[179] Illegality of use of force was examined in chapter 3 under coercion argument.

Further examination of these claims reveals that the conquest argument is problematic for several reasons.

(iii) The inter-temporal law argument[180]

It has been noted that today, states can no longer gain title through conquest. Whether the Saudis could claim title by conquest depends on whether conquest was an accepted mode of title acquisition at the time of the action, according to the doctrine of inter-temporal law.[181] Even if `Asir, Jizan and Najran were acquired by Saudi Arabia through conquest, as claimed by the Yemenis, that conquest could have been legal prior to the drafting of the 1945 UN Charter according to the inter-temporal law prevailing at the time of the Saudi acquisition of those territories.

McHugo argues that conquest was indeed accepted before the drafting of the UN Charter:[182]

> 'Until some point in the first half of [the twentieth] century, it used to be possible to obtain good title in international law by conquest.'

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[176] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents (in Arabic),* p. 234, footnote 447, in reference to Jum`a, *State's Territory and Boundaries* (in Arabic), p. 19.

[177] The resolution was adopted by the Assembly of the League of Nations in March 1932, after Japan's invasion of Manchuria. See Sharma, ibid., p. 149. On *Stimson Doctrine of Non-Recognition* read Harris, *Cases and Materials on International Law,* pp. 218-219.

[178] Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in light of British Role based on Published Documents (in Arabic),* p. 235.

[179] Ibid.

[180] See also chapter 3, legal use of force and conquest before the 1919 League of Nations' Covenant and gradual prohibition on use of force until the 1945 United Nations Charter, examined in the coercion argument.

[181] See above.

[182] McHugo, 'How to Prove Title to Territory: a Brief, Practical Introduction to the Law and Evidence', (1998), *Boundary & Territory Briefing* , vol. 2, No. 4 p 3.

Lee reaches the same conclusion:[183]

> 'Certainly up until World War II, international law recognised the acquisition of territory following conquest. The right of conquest was the right of a military victor to sovereignty over the conquered territory and its inhabitants.'

It is also noted that Koroma accepted that before the 1945 UN Charter, conquest was a legitimate means of gaining title to territory provided the conquest was a result of a legal war not outlawed by international agreements such as the 1815 Treaty of Vienna.[184]

(iv) Analysis of the conditions of conquest

Even if conquest was illegal at the time of the Saudi acquisition of title to the disputed territories, the facts do not necessarily show that a conquest, as defined by international law, occurred.

It is suggested that the Saudis entered the parts of `Asir and Jizan occupied by the Idrisi peacefully, by virtue of the 1926 Treaty of Makkah. This instrument recognised King Abdul Aziz's sovereignty over the Idrisi state's territory, and that he in turn provided protection to the Idrisi, as explicitly stated in Article 1[185] and Article 7[186] of the Treaty.[187] In the 1927 Anglo-Saudi Treaty, Britain recognised the full independence of King Abdul Aziz within the territories he had in his charge at the time of the conclusion of the Treaty. Article 1 reads: [188]

> 'His Britannic Majesty recognises the complete and absolute independence of the dominions of his Majesty the King of Hejaz and of Nejd and its Dependencies.'

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[183] Lee, 'Continuing Relevance of Traditional Modes of Territorial Acquisition in International Law and Modest Proposal', p. 10.

[184] Koroma, 'The Settlement of Territorial and Boundary Disputes in Central Africa', p. 83.

[185] Article 1 reads 'His Lordship the Imam Sayyied Al-Hassan bin Ali Al-Idrisi acknowledges the ancient marches described in the treaty of the 10th Safar 1339 AH [the 1920 Saudi-Idrisi Treaty], made between the Sultan of Nejd and the Imam Sayyid Mohammed bin Ali Al-Idrisi, and which were at that subject to the House of Idrisi as being in virtue of this agreement under the sovereignty of His Majesty the King of Hejaz, Sultan of Nejd and its dependencies.'

[186] Article 7 reads 'The King of Hijaz, Sultan of Nejd and its dependencies undertakes to repell all internal and external aggression which may befall the territories of `Asir as defined in Article 1 and this by agreement between the two contracting parties according to the circumstances and exigencies of interest.'

[187] See the section on cession, below.

[188] It is noted that the British recognition did not explicitly name these territories. Nonetheless, when Ryan met with King Abdul Aziz in July 1934, he said that the British Government was happy with the terms of the Treaty of Taif. This may indicate that the British did not deny the Saudi title claim to `Asir, Jizan and Najran.

It follows that there was no debellatio[189] on the Saudi's part, and so title by conquest did not occur, as none of the conditions of conquest existed in relation to this part of `Asir.[190]

What about the Saudi occupation of the parts of `Asir ruled by the Al-Aid family following the withdrawal of the Ottoman Empire in 1919? On the assumption that the Al-Aid family were a government ruling that part of `Asir, there was a possibility this territory was a state. At the same time, Gilmore explains:[191]

> 'In international law certain entities which do not satisfy the criteria for statehood may nonetheless acquire separate legal personality. For example, the international community has on occasion seen fit to certain autonomous entities, commonly known as internationalised territories. The classic illustration of such creations was the Free City of Danzig.'

It is true that neither Saudi Arabia nor Al-Aid's territories were created by the international community, unlike Danzig. However, in 1919 when the Saudi army invaded Al-Aid territory, the two entities were independent from each other and were enjoying separate personality, as was Danzig in 1932, and therefore international law applied to their acts, as held by the Permanent Court of International Justice in its 1932 Advisory Opinion on the *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*:[192]

> 'In the Court's opinion, the fact that the legal status of Danzig is *sui generis* does not authorize it to depart from the ordinary rules governing relations between States and to establish new rules for the relations between Poland and Danzig.'

Thus, an arbitral tribunal may have found that Saudi Arabia had acquired title over the parts of `Asir ruled by Al-Aid by virtue of conquest, because in 1919-1920[193] Saudi Arabia, shortly after Al-Aid's independence from the Ottomans, invaded the Al-Aid territory in `Asir, followed by the annexation this territory. The Saudi conquest of Al-Aid territory occurred before Saudi Arabia joined the League of Nations which was the first legal binding document forbidding its member states from the use of force and arguably acquisition of territories of other member states by conquest. In light of inter-temporal law, Saudi Arabia

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[189] These requirements are described by Sharma, in *Territorial Acquisition, Disputes and International Law,* a 'two-fold process involving *de bellatio* plus subjugation traditionally exercised through annexation', p. 143.
[190] See section of cession, below.
[191] Gilmore, *Newfoundland and Dominion Status: The External Affairs Competence and International Law Status of Newfoundland 1855-1934* (1988), p. 234.
[192] *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory* (1932) PCIJ Reports, ser. A/B, no.44, pp. 23-24. See also Gilmore, *Newfoundland and Dominion Status: The External Affairs Competence and International Law Status of Newfoundland 1855-1934,* p. 235, footnote 288.
[193] See section on the Saudis, in chapter 1.

was still permitted to acquire title to territory by conquest before she joined the League. In addition, Saudi acquisition of `Asir was complete before negotiations with Yemen began in 1927. It is noted that Saudi Arabia kept possession of `Asir during the 1934 war, even though its tribes were under attack from Yemeni forces. Consequently, no Saudi conquest of any Yemeni lands occurred before or after the war. Additionally, the Treaty of Taif emphasised that two states would keep only those lands that they had in their possession before the war. The Treaty also made it clear that Yemeni waiver of claims covered the former Al-Aid and Idrisi territories in `Asir and Jizan which Saudi Arabia had acquired by cession from the Idrissi State or had legally conquered from Al-Aid. Therefore, it is safe to conclude there was no conquest (whether legal or illegal) of any Yemeni lands in `Asir or Jizan.

In relation to Najran, it has been established that the Yemeni troops withdrew from Najran after the war in accordance with the Treaty of Taif. Therefore the Saudi possession of Najran occurred with the consent of Yemen.[194] In the Treaty of Taif, Yemen agreed to recognise Saudi title to Najran and to withdraw its occupying forces who had started the military conflict when they invaded Najran which was under the protection of the Saudis. At the time that war broke out, title to Najran was the subject of discussions between Saudi and Yemeni negotiators. Thus, Saudi Arabia did not acquire Najran by conquest because Najran was not part of Yemen.

As to title to Al-Wadia village in dispute during the southern Yemen-Saudi war in 1969,[195] again the Yemeni argument is not upheld by international law. Firstly, under the 1914 Anglo-Turkish Convention's Violet line, Al-Wadia was located inside Saudi territory. From the beginning of the Saudi-British dispute over the boundary in the Rub' Al-Khali Desert until Britain withdrew from southern Yemen in 1967, Britain treated Al-Wadia as part of Saudi Arabia. This was reflected in the unilaterally-declared British boundary line in 1955.[196] Moreover, during the Al-Wadia war, Britain recognised that Saudi Arabia had title to the village because it was located to north of the Violet line.[197] Secondly, independent reports[198] also support the fact that it was southern Yemeni forces who invaded the village and Saudi forces acted in self-defence. Therefore, the elements of conquest did not exist.

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[194] See chapter 3.
[195] See chapter 2.
[196] See Appendix 2.10.
[197] See above and see chapters 1, 2 and 3.
[198] See chapter 2.

In sum, Yemen's argument of unlawful conquest is supported neither by the international law as it stood at the time, nor the facts.

5. Modes of title acquisition applied to the disputed territories

(a) Uti-Possidetis

(i) Uti-possidetis in international law

Although the *uti-possidetis* doctrine is not amongst the traditional modes of title acquisition, Brownlie considers it in his examination of the roots of title. He explains it as a means to delimit the boundary between new states.[199]McHugo explains this doctrine as:[200]

> 'Under the principle known as *Uti Possidetis*, which originated in Latin America when it became independent from Spain, administrative boundaries from the colonial period were deemed to be transformed into international frontiers between states which had previously been different province (or groups of provinces) all under one sovereignty.'

In the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening),* a chamber of the International Court of Justice decided the course of the land boundary between El Salvador and Honduras in six disputed sectors of that boundary.[201] *Uti-possidetis* played an important role in deciding the case as both states were disputing territorial sovereignty limits as they existed at the emergence of the states after their independence in the nineteenth century.

The application of *uti-possidetis* was also applied in other title and boundary disputes outside Latin America, such as in Africa. For instance, it was applied in the *Burkina Faso and Mali Frontier Dispute Case*,[202] citing the *Organization of African Unity*'s Cairo Resolution[203] stating that colonial boundaries would not change after the independence of those states.[204] Moreover, *uti-possidetis* has also been adopted in relation to new states in the former Yugoslavia.[205]

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[199] Brownlie, *Principles of Public International Law,* p. 132.
[200] McHugo, p. 9.
[201] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (1992) ICJ Reports.
[202] *Burkina Faso and Mali Frontier Dispute Case* (1986) ICJ Reports, p. 554.
[203] Jennings and Watts, *Oppenheim's International Law,* p. 670.
[204] Taha stated that Boutros Ghali, former UN Secretary General, thought the African States adherence to colonial international boundaries as a kind of adoption of *uti-possidetis* principle but giving it a wider application to include former colonial international boundaries not only limited to former colonial administrative boundaries when appearing in Latin America in 1810: Taha, *International Law and Boundary Disputes* (1982) pp. 59-60.
[205] Brownlie, *Principles of Public International* Law, p. 133.

The Judgement in the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* defined the meaning of the principle, which is that the administrative boundary between two or more former divisions created by a colonial or former state becomes an international boundary.[206]

(ii) Uti-possidetis as applied to the Saudi-Yemeni dispute

It is suggested that the doctrine of *uti-possidetis* would have been applicable to the Saudi-Yemeni territorial sovereignty dispute. In this regard, Leatherdale[207] stated that the Ottoman Empire in 1872 created the Ottoman sanjak of Yemen, or Vilayet of Yemen, which included `Asir, Jizan and northern Yemen within one district. However, in 1910 the Ottoman Empire detached `Asir, including Jizan, from the Vilayet of Yemen. Leatherdale writes:[208]

> 'In 1872 the Ottoman Government constituted the Vilayet of the Yemen, with `Asir as one of its constituent *sanjaks*. Increasingly, the Turks were challenged by two separate rebellious chiefs with distinct histories and grievances - the Shiite Imam of the Yemen and the Sunni Idrisi of `Asir. Acknowledging the separate causes of the unrest, the Turks imposed political distinctions between `Asir and the Yemen. In 1910 `Asir was detached from Yemeni administrative and reconstituted as a completely separate administrative unit, without the status of a *vilayet*, but directly under the central government at Constantinople.'

Although a map[209] adopted by a Yemeni governmental source showed the Vilayet of Yemen to include `Asir from the establishment of the Vilayet to 1918-19 when Yemen gained independence from the Ottomans, Leatherdale shows that there was administrative independence of `Asir and Jizan from northern Yemen as of 1910, and that `Asir (including Jizan) was directly ruled by the Turkish capital. By drawing an analogy between the Spanish administrative divisions in Latin America and the Ottoman Empire's administrative divisions of the Vilayet of Yemen and `Asir as of 1910, the *uti-possidetis* is applicable in deciding whether Yemen had title to `Asir and Jizan when Yemen became independent from the Ottoman Empire.

It is suggested that an arbitration tribunal deciding the title dispute between Saudi Arabia and Yemen regarding `Asir, Jizan and Najran would have decided that in 1927, the critical date, there was no Yemeni title over `Asir, Jizan and Najran because, before Yemen became independent from the Ottoman Empire in 1919, it was an Ottoman administrative unit, separated from `Asir and Jizan as of 1910. As the *uti-possidetis* principle fixes boundaries of

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[206] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (1992) ICJ Reports, pp. 386-388.
[207] Leatherdale, *Britain and Saudi Arabia 1925-1939: The Imperial Oasis,* p. 137.
[208] Ibid., pp. 136-137.
[209] See Appendix 2.6

a territory according to former colonial administrative units following independence, it would follow that Yemen could not claim title to territory beyond the Ottoman-created Vilayet of Yemen in 1919.

(b) Cession

(i) Cession as a mode of title acquisition

Cession forms one of several title acquisition modes. Jennings defined cession thus:[210]

> 'Cession is the transfer of territorial sovereignty by one State to another State.'

Jennings notes that in the *Case of Reparation Commission v. German Government* [211] it was said:[212]

> '"The cession of a territory ... means the renunciation made by one State in favour of another of the rights and title which the former may have to the territory in question." This is effected by a treaty of cession expressing the agreement to the transfer.'

It is recognised in international law that a state can cede its whole territory to another state, as Oppenheim explains: [213]

> 'Every state as a rule can cede a part of its territory to another state, or by ceding the whole of its territory can even totally merge into another state. To constitute a cession it must be intended that sovereignty will pass. Acquisition of governmental powers, even exclusive, without an intention to cede territorial sovereignty, will not suffice.'

(ii) Cession applied to `Asir, Jizan and Najran

Examination of relevant international sources shows that there were potentially two treaties of cession: the 1920 Saudi-Idrisi Treaty and the 1926 Saudi-Idrisi Treaty. The first treaty is viewed as constituting Idrisi cession of title over Najran to the Saudi ruler, the second as cession of the total territory of the Idrisi tate to the Saudi King Abdul-Aziz.

The conclusion of the 1920 Saudi-Idrisi Treaty, by which the Idrisi ruler recognised title to Saudi ruler in Najran, means that the Idrisi state renounced the title it held to Najran, ceding it to Saudi Arabia.

Moreover, Article 1 of the 1926 Saudi-Idrisi Treaty of Makkah's provides that:[214]

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[210] Jennings, *The Acquisition of Territory in International Law*, p. 16.
[211] Ibid., p. 16, footnote 1. See also *Reparation Commission v. German Government, Annual Digest International Law Cases (1923-24)*, Case no. 199.
[212] Jennings, *The Acquisition of Territory in International Law,* p. 16.
[213] Jennings and Watts, *Oppenheim's International Law*, p. 680.
[214] The original text of the Treaty in Arabic is found at Al-Zulfa, *Asir during the Reign of King Abdul Aziz: Its Political, Economic, and Military Role in Building of the Modern Saudi State (In Arabic),* p. 201.

> 'His Lordship the Imam Sayyed Al-Hassan ibn Ali Al-Idrissi acknowledges the ancient marches described in the Treaty of the 10th Safar 1339 AH [*1920 Saudi-Idrissi Treaty*] made between the Sultan of Nejd and the Imam Sayyed Mohammed ibn Ali Al-Idrissi, and which were at that date subject to the House of Idrissi, as being in virtue of this agreement under the sovereignty of His Majesty the King of Hejaz, Sultan of Nejd and its dependencies.'

This shows that the Idrisi ruler ceded the whole territory of his state to Saudi Arabia, leading to a merging of the two states. The Idrisis had decided to merge with Saudi Arabia as they thought that that was the only way to safeguard the rest of their territory from the threat of invasion from Yemen.[215]

During the Saudi-Yemeni negotiations held between 1927 and 1934 northern Yemen's Imam Yahya demanded that Saudi Arabia 'terminate' this treaty. It is noted that Yemeni denial of the cession carried in the 1920 and 1926 Saudi-Idrisi Treaties had no effect on the validity of those cessions because Yemen was a third party and international law denies any third state a power to veto or nullify cession:[216]

> 'As a rule, no third state has the right of veto with regard to a cession of territory. Exceptionally, however, such a right may exist. It may be that a third state has by previous treaty acquired a right of pre-emption concerning the ceded territory. There is a clear right to refuse recognition when a state seeks to obtain title means contrary to international law by unlawful resort to war.'

In light of this, the Yemeni objection had no effect on the validity of the Idrisi cession of title to its territory in `Asir and Jizan to Saudi Arabia. Moreover, the 1915 Anglo-Idrisi Treaty said that Britain recognised the Idrisi ruler as an independent ruler over his territory and that he had not been deprived of his right to cede any parts of his territory.

In light of the definition of cession and its conditions, it is suggested that the 1920 and 1926 Saudi-Idrisi Treaties were valid cessions of title to `Asir, Jizan and Najran.

(c) Disposition other than by cession

(i) Introduction

The following section will consider arguments based on modes of title acquisition by treaty other than by cession. Brownlie writes:[217]

> 'Apart from cession and transfer in accordance with a treaty, title may exist on the basis of a treaty alone, the treaty marking a reciprocal recognition of sovereignty in solemn form and with attention to detail. In the case of a disputed frontier line the boundary treaty which

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[215] See chapter 1.
[216] Jennings and Watts, *Oppenheim's International Law*, p. 683.
[217] Brownlie, *Principles of Public International Law*, p. 131.

> closes the dispute will create title, because previously the question of title was unsettled: in contrast a treaty of cession transfers a definitive title.'

Quillen, in her examination of whether Russia or Japan had better title to the Kuril Islands, argued that Russia could have claimed better title to the islands than Japan because, according to the 1951 San Francisco Treaty, Japan had renounced its title to the disputed islands, which had been under Russian control since the 1945 invasion.[218] On the subject of the Russian conquest of the Kuril Islands in June 1945, she writes:[219]

> 'Japan seems to have a better claim for initial title based on its early exploration and occupation of the area and the late eighteenth century treaties designating the border between the two countries as north of Etorofu. But ultimately, Russia clearly acquired control of the disputed territory through conquest combined with the San Francisco Peace Treaty and other Allied agreements, and this possession has continued into present times.'

(ii) Disposition of `Asir, Jizan and Najran

As Article 2 of the 1934 Treaty of Taif stated that both Saudi Arabia and Yemen renounced title to formerly disputed territories, one can understand this mutual renunciation in the light of Brownlie's remarks and by analogy with Japan's renunciation of its title claim to the Kurile Islands, or the 'Northern Territories' as known by the Japanese, in the 1951 San Francisco Peace Treaty.

(ii) Disposition of the some of the Rub' Al-Khali Desert

Like the 1934 Treaty of Taif, the1913 and 1914 Anglo-Turkish Conventions could form a root of title if they were thought to have ended a former title and boundary dispute between Britain and the Ottoman Empire, the two original parties to the treaties, later succeeded by Saudi Arabia and Yemen.

Because the Ottoman Empire gave up title rights and claims to territories beyond the Blue Line in the 1913 Anglo-Turkish Convention, and beyond the Violet line in the 1914 Anglo-

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[218] Quillen explains the dispute and Russian conquest of the Kuril Islands thus: 'Japanese control over the disputed islands finally ended in 1945 with the Russian occupation near the end of World War II and subsequent formal annexation of the area in September of that year. These acts were a classic example of acquiring territory by conquest. However, within modern times war has been defined an illegal use of force, and moreover, peace "treaties based on coercion of a state should be regarded as invalid." Beginning with the Covenant of the League of Nations in 1919, followed by the Kellogg-Briand Pact of 1928 (General Treaty for the Renunciation of War), and Article 2(4) of the United Nations Charter, war was generally outlawed under international rules': Quillen, 'The "Kuril Islands" or the "Northern Territories": Who Owns Them? Island Territorial Dispute Continues to Hinder Relations Between Russia and Japan' (1993) *North Carolina Journal of International Law, vol. 18,* pp. 648-649.

[219] Ibid., p. 655-656.

Turkish Convention, one can compare them with Brownlie's comment that a root of title can be derived from them. Article 2 of the 1913 Anglo-Turkish Convention reads:

> 'The Ottoman sanjak of Najd, the northern limit of which is indicated by the demarcation line defined in Article 7 of this convention, ends in the south at the gulf facing the island of al-Zakhuniyah, which belongs to the said sanjak. A line beginning at the extreme end of that gulf will go directly south up to the Rub al-Khali [the Rub' Al Khali Desert] and will separate the Najd from the peninsula of Al-Qatar [Qatar]. The limits of the Najd are indicated by a blue line on the map annexed to the present convention.'

So, Article 2 of the 1913 Convention is understood to comply with Brownlie's classification of root of title. In addition, Article 3 of the 1914 Anglo-Turkish Convention provides:

> '... it is agreed between the Sovereign Parties here contracting and agreeing, in conformity with the above-cited protocol and with due regard for conditions and specifications there contained, that the boundary of the Ottoman territory shall follow a straight line extending from Lakmat al-Shuub north-eastwards to the desert of the Rub al-Khali at a 45 [degree] angle. This line shall rejoin the Rub Al-Khali at parallel 20 degrees, the straight and direct line southwards which breaks off at a point on the southern coast of the Gulf of al-Uqair and which separates the Ottoman territory of the Sanjk of Najd from the territory of Qatar, in agreement with Article 11 of the Anglo-Turkish Convention of 29 July 1913, concerning the Persian Gulf and the neighbouring territories. The first of the two lines is shown in violet and the second in blue on the special map annexed ...'

It is noted that the 1914 Convention is not conclusive in its renunciation of former claims or title and disputes, unlike the 1913 Convention, but it created a boundary between Ottoman territories in Najd and the Villayet of Yemen on the one hand and the nine districts of Aden under British protection on the other. However, these two treaties were not recognised by Saudi Arabia and Yemen (northern Yemen only) because those lines did not meet the claims they demanded.[220] It is for this reason that the 1995 Saudi-Yemen MOU did not mention the 1914 Anglo-Turkish Convention as a basis for boundary negotiators to consider in their talks on settlement of the dispute. The two states' conflicting territorial limits went far beyond the lines set out in the 1914 Convention.

However, Schofield noted that Yemen was expected to ask the tribunal in 2000 to apply the 1914 Anglo-Turkish Convention because it would give them a larger portion of the desert area.[221] It is clear that Yemen had a better chance to gain title to the Rub' Al-Khali Desert title based on this convention. States have been successful in similar circumstances; for instance, the ICJ judgement in the *Qatar/Bahrain case* applied the 1913 Anglo-Turkish

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[220] See chapters 1, 2 and 3. It was noted that Imam Yahya denounced the 1913-14 Anglo-Turkish Conventions because he wanted to annex southern Yemen and the Rub Al-Khali Desert so that he could unified his 'Greater Yemen'. However, as Schofield noticed, the Violet line was considered by Yemen after its unification in 1990.

[221] Schofield writes: 'Even the unified government of Yemen has, on the odd occasion during the early 1990s, made utterances that the Violet line might be regarded as the operative border in this region.': Schofield, 'The International Boundary between Yemen and Saudi Arabia', p. 24.

Convention to the dispute.[222] Moreover, the UN Demarcation Committee applied the terms of the 1913 Anglo-Turkish Convention in the demarcation of the Iraq/Kuwait borders.[223]

Nevertheless, a state having title to territory based on the delimitation of the boundary of the said territory is vulnerable to losing it by virtue of other means, such as abandonment or prescription. The next sections will show that not all territories granted to Yemen by these Conventions would actually be given to Yemen, if it appeared that Yemen or its predecessor, the British Government, had abandoned it, or if Saudi Arabia could have proved a valid prescription.

(d) Renunciation and abandonment of title

The concept of renunciation is relevant to Saudi-Yemeni title claims to the Rub' Al-Khali Desert. Title to territory is lost by abandonment by virtue of declaration as Brownlie states:[224]

> 'It is not uncommon for states to renounce title over territory in circumstances in which the subject-matter does not thereby become terra nullius (territory belonging to no state). This distinguishes renunciation from abandonment. Furthermore, there is no element of reciprocity, and no contract to transfer, as in the case of a treaty of cession. Renunciation may be a recognition that another state now has title or a recognition of, or agreement to confer, a power of disposition to be exercised by another state or group of states.'

The 1914 Anglo-Turkish Convention could have provided evidence that Yemen had title to a huge territory of the Rub' Al-Khali Desert located to south of the Violet line. However, as examined earlier in the context of the historical title argument, in 1955 Britain declared a line known later as the 'Independence line'.[225]

In view of this, an arbitral tribunal may have found that in 1955 the British gave up title to the areas north of the Independence line and south of the Violet line resulting either in the territory becoming *terra nullius*, and later being either acquired by Saudi Arabia (or by Yemen afer 1967) by virtue of occupation[226], or renounced title which was immediately taken by Saudi Arabia as they had argued for Britain to give up lands to the north of the

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[222] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar/Bahrain)* (2001) ICJ Reports.

[223] Mendelson and Hulton, 'The Iraq-Kuwait Boundary' (1993) *British Yearbook of International Law,* p. 156. They state that the UN Commission charged to demarcate the Iraq-Kuwait border 'considered a broad range of documentation mentioning or depicting the boundary relevant to the demarcation. This included, *inter alia*, the unratified Anglo-Turkish Convention of 1913…'

[224] Brownlie, *Principles of Public International Law*, p. 134.

[225] See Appendix 2.10.

[226] See section on occupation, below.

Hamza (or Fuad) line, in which case, the territory did not become *terra nullius*.[227] This section will consider whether the British actions amounted to renunciation or abandonment of title to parts of the Rub' Al-Khali Desert.

One of the conditions of renunciation or abandonment is the intention of the abandoning state. The *Clipperton Island Award* states:[228]

> 'There is no reason to suppose that France has subsequently lost her right by dereliction, since she never had the animus of abandoning the island, and the fact that she had not exercised her authority there in a positive manner does not imply the forfeiture of acquisition already definitely protected.'

It is suggested that although Yemeni title was secured by the Violet line, Britain's declaration in 1955 that the frontier of its southern Yemeni protectorate was the so-called Independence line shows the animus of Britain to give up title to territory south of the Violet line and north of the 1955 line without specifying who had title to this territory. From 1934 to 1955 Saudi Arabia and Britain conducted negotiations to settle the boundary issue in the area and Saudi Arabia benefited greatly from the British declaration by gaining a tacit title, recognised by Britain. Therefore, the British action could be viewed as unilateral renunciation or abandonment in favour of Saudi as a claimant state. In this situation, the British renunciation is itself the root of Saudi title to these parts of the Rub' Al-Khali Desert.

If the territory was not occupied by Saudi Arabia when Britain declared the boundary line of 1955, it still constitute abandonment of title and the territory would have become *terra nullius* for some time, until Saudi Arabia or Yemen took the actions necessary to acquire it. This is similar to the British acquisition of the Nicobar Islands in 1869 after they became terra nullius in the aftermath of the Dutch abandonment (also called dereliction) of these islands, in association with the intention to relinquish title to them. This behaviour allowed the British to acquire the islands after they became *terra nullius* on the basis of their intention to acquire sovereignty.[229]

(e) Subsequent conduct: recognition, acquiescence and estoppel

The subsequent conduct of states involved in territorial sovereignty disputes may have an impact on their legal positions. For instance, if States A and B agreed on a boundary line

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[227] See Appendix 2.2 showing Fuad Hamza's line propsed by Saudi Arabia in 1935. See also Appendix 2.10 showing the Saudi declared line in 1955.
[228] See Brownlie, *Principles of Public International Law*, p. 143.
[229] Marston, 'The British Acquisition of the Nicobar Islands, 1869: A Possible Example of Abandonment of Territorial Sovereignty', (1998) *British Yearbook of International Law, vol. 61*, pp. 244-265.

giving title to lands to the north of it to State A and title to lands to the south of the line to State B, it does not necessarily mean that the title and boundary allocation would remain unaffected in future. To illustrate, if State A exercises sovereign activities in a part of State B's territory and State B does not protest against State A's activities, then State A may acquire title to this territory due to acquiescence. Moreover, any protest must be prompt although there is no definitive limitation period. If State B protested after an unreasonable delay, it would be estopped (precluded) from asserting its title. However, if on the assumption that States A and B were in a conflict over title to a territory and during the period of the conflict either state recognised tacitly or expressly all or some of the other's claims, this behaviour is called 'recognition'. A state recognising the claims of another state would be estopped from making claims inconsistent with this recognition.

It has been observed that estoppel, although itself not a title acquisition mode[230], has an impact on success of title arguments, if combined with prescription or treaty interpretation.[231] This point is illustrated by the *Eastern Greenland case (Denmark/Norway)*[232] where the Court found Norway's claim to title to Greenland was unacceptable because she had accepted agreements incorporating Danish claims to the whole territory. Therefore, Norway was precluded from challenging Danish title to the territory. Many writers agree that estoppel is important in title disputes:[233]

> '...whereby states deemed to have consented to a state of affairs cannot afterwards alter their position. Although it cannot found title by itself, it is of evidential and often of practical importance.'

Shaw suggested two forms of estoppel: prior recognition and acquiescence:[234]

> 'Estoppel may arise either by means of a prior recognition or acquiescence, but the nature of the consenting state's interest is vital. Where, for example, two states put forward conflicting claims to territory, any acceptance by one of the other's position will serve as bar to renewal of contradictory assertions.'

In the *Temple of Preah Vihear Case (Thailand/Cambodia),* the International Court of Justice found that Thailand's conduct, especially with regard to Thai (then Siamese) officials' visits to the temple in 1930 and their reception as guests by French political residents, created

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[230] 'It is doubtful whether estoppel or preclusion can ever be itself a root of title to sovereignty. It may assist in the determination of a title based on some other ground but there probably is no such thing as a title by estoppel.'; see Jennings: *The Acquisition of Territory in International Law,* p. 42.
[231] Ibid., pp. 47-51; Shaw, *International Law,* p. 439.
[232] *Eastern Greenland case (Denmark/Norway)* (1933) PCIJ Reports, ser. A/B, no. 53, pp. 46 and 68; see also Shaw, *International Law,* p. 439.
[233] Shaw, *International Law* (2003) p.439.
[234] Ibid.

estoppel which prevented Siam, later Thailand, from claiming title to the area of the temple.[235]

The doctrine of estoppel was also considered by the International Court of Justice in the *North Sea Continental Shelf Cases* when the Court found Germany was not precluded from denying applicability of the conventional regime, contrary to what was claimed by the Netherlands and Denmark:[236]

> 'Only the existence of a situation of estoppel could lend substance to the contention of Denmark and the Netherlands -i.e., if the Federal Republic were now precluded from denying the applicability of the conventional régime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that régime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice. Of this there was no evidence. Accordingly, Article 6 of the Geneva Convention was not, as such, applicable to the delimitations involved in the present proceedings.'

Estoppel was also relied on by the United Kingdom in its dispute with France over the Minquiers Islands. It claimed that France was precluded from claiming title to the islands because the French Minister of Marine's letter, dated the 14th September 1819, stated that island was under English sovereignty. On this, McHugo writes:[237]

> 'Although this statement was made in abortive negotiations, it was a statement of fact, not a proposal or concession.'

The Court considered the French letter was an admission from France that sovereignty over the Minquiers belonged to the United Kingdom.

Jennings notes that estoppel is by no means a title acquisition mode, but it works in conjunction with title modes:[238]

> 'It is doubtful whether estoppel or preclusion can ever be itself a root of title to sovereignty. It may assist in the determination of a title based on some other ground but there probably is no such thing as a title by estoppel.'

As Yemen could benefit from the British delimitation according to the Blue and Violet lines, it could be disadvantaged by the British declaration of the 1955 boundary line showing the limits of the territorial sovereignty of Yemen, because Saudi Arabia could argue that Yemen

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[235] *Temple of Preah Vihear Case (Thailand/Cambodia)* (1962) ICJ Reports.
[236] See *North Sea Continental Shelf Cases* (1969) ICJ Reports, p. 26.
[237] McHugo, 'How to prove title to territory: a brief, practical introduction to the law and evidence', p. 22.
[238] Jennings, *The Acquisition of Territory in International Law,* p. 42.

was not allowed to claim title beyond 1955 line due to estoppel.[239] Such a claim would not give title to Saudi Arabia but it could preclude Yemen from claiming title beyond the 1955 line. Thus, the estoppel itself is not a root of title but it may assist in determining who had title if estoppel is considered together with other grounds of title.

Furthermore, the 1995 Saudi-Yemen MOU may also constitute further recognition by Yemen that the 1913-14 Conventions were not mandatory for settlement and thus Yemen may be found to be precluded from relying on the Blue and Violet lines on the basis of estoppel.[240]

(f) Occupation

If title did not transfer to Saudi Arabia following a renunciation by Britain through the Independence line, Saudi Arabia could alternatively claim that she had acquired title through occupation following abandonment of title by Britain. In this scenario, Saudi Arabia could gain the territory to the north of the 1955 line by occupation of *terra nullius.* A similar argument was made by Norway in the *Eastern Greenland Case* where it claimed that parts of Greenland had become *terra nullius* after disappearance of settlements.[241]

Oppenheim defines occupation thus:[242]

> 'The act of appropriation by a state by which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another state'

It could be applicable to the territory in the Rub' Al-Khali Desert to north of the 1955 line if it did indeed become *terra nullius* in 1955 after the British declaration that the line shown on map of 1955 represented the border of Yemen. Saudi Arabia or Yemen might claim title to those areas on condition that they meet two conditions of valid occupation: possession and administration. Oppenheim states possession as one of the ingredients of occupation:[243]

> 'The territory must really be taken into possession by the occupying state. For this purpose it is necessary that it should take the territory under its sway (corpus) with the intention of acquiring sovereignty over it (animus). This –at least for considerable and habitable areas - normally involves a settlement on the territory, accompanied by some formal act which

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[239] About estoppel McNair writes: 'It is reasonable to expect that any legal system should possess a rule designated to prevent a person who makes or concurs in a statement upon which another person in privity with him relies to the extent of changing his position, from, later asserting a different state of affairs': McNair, *The Law of Treaties* (1961) p. 485.

[240] See chapter 3.

[241] *Eastern Greenland Case* (1933) *PCIJ Reports, ser, A/B, no. 53*; See Brownlie, *Principles of Public International Law,* p. 137, footnote 83, and p. 143, footnote 130. The Court rejected the argument of Norway: 'As regards voluntary abandonment, there is nothing to show any definite renunciation on the part of the Kings of Norway or Denmark.'

[242] Jennings and Watts, *Oppenheim's International Law*, p. 686.

[243] Ibid., p. 689.

> announces both that the territory has been taken possession of that and the possessor intends to keep it under its sovereignty.'

Administration is also required to follow possession:[244]

> 'After having taken possession of a territory, the possessor must establish some kind of administration thereon which shows that the territory is really governed by the new possessor. If, within a reasonable time after the act of taking possession, the possessor does not establish some reasonable authority which exercises governing functions, there is then no effective occupation, since in fact no sovereignty is exercised by any state over the territory.'

Within the meaning of occupation, a tribunal would have found that Saudi Arabia had managed to establish three Saudi border guard posts in areas south of the Violet line and north of the Independence line of 1955 at Umm Al-Sirdab, Umm Al-Malh, and Al-Kharkhir.[245] The Saudi presence at those three locations gives an indication that the territory, if it had become *terra nullius* in 1955, was later occupied by Saudi Arabia. Saudi Arabia may thus have been able to convince a tribunal that it had established title over the areas north of 1955 line.

However, Al-Ghamdi's map reveals that Saudi Arabia went beyond the 1955 line and established a presence within this territory. Such action could constitute prescription examined in the following section.

(g) Prescription

Prescription is defined by one author as:[246]

> 'the acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order.'

It is found that there is no general rule applicable to all cases of prescription. The sole condition is a lack of protest from the sovereign state whose territory is claimed. Oppenheim says:[247]

> 'No general rule could be laid down as regards the length of time and other circumstances necessary to create such a title by prescription. As long as other states keep up protests and claims, the actual exercise of sovereignty is not undisturbed, nor is there the required general conviction that the present condition of things is in conformity with international order. But after such protests and claims, if any cease to be repeated, the actual possession ripens into that condition which is in conformity with international order.'

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[244] Ibid.
[245] See Al-Ghamdi's Map in Annex 2.14, for locations of Saudi-Yemeni presence in the Rub' Al-Khali Desert.
[246] Jennings and Watts, *Oppenheim's International Law,* p. 706.
[247] Ibid., pp. 706-707.

Within this meaning of prescription, it was Saudi Arabia which went beyond the areas located originally under Yemen's territorial sovereignty based on the Violet and Independence lines. Thus an arbitral tribunal in 2000 would have been faced with the question whether Saudi Arabia had managed to establish title by prescription over Yemeni territory. Al-Ghamdi shows where Saudi Arabia managed to establish Saudi border guard posts in Yemeni territories south of the 1955 line.[248] Those areas are Al-Murassas, Huwaymil, Qalluubah, Al-Ma`atif, Al-Mashabk, UMM Gharib.

There is at present no definitive information as to when Saudi Arabia managed to establish those posts. The tribunal would have needed to verify when Saudi Arabia established its presence and whether Yemen had protested Saudi attempts to do so. Further, the length of the Saudi presence in those areas is a crucial matter, even though there is no fixed period within which a state should perform sovereignty without protests. For instance, that a period of fifty years forms a good title by prescription was agreed on by a treaty signed on the 2nd February 1897 between Britain and the United States of America (acting on behalf of Venezuela) in the Boundary Arbitration between Great Britain and Venezuela in 1899.[249] The treaty provides:[250]

> 'Adverse holding or prescription during a period of fifty years shall make a good title.'

Due to the secrecy of Saudi-Yemeni policy, there is no public information available about the protests except those examined earlier under the historical argument analysis.[251] Those protests would not have been very helpful in 2000, had the dispute been arbitrated. It was reported that Saudi Arabia protested against Yemen's issuance of licenses to oil companies for conducting oil research in the areas south of Violet line which would have been Yemeni territory based on the 1914 Convention.[252] Had Saudi Arabia managed to show that Yemen was acquiescent in relation to the Saudi presence in the areas south of the 1955 line for a long period of time, then Saudi Arabia may have managed to obtain title by prescription. Any protests by Yemen would have voided any Saudi prescription attempts.

An example of such a case was when Mexico's protest blocked the United States from acquiring title by prescription in the *Chamizal Arbitration*. In that case, Mexico sent several

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[248] See Appendix 2.14.
[249] Jennings and Watts, *Oppenheim's International Law,* p. 706, footnote no 1.
[250] Ibid.
[251] See above.
[252] See chapter 1.

diplomatic protests to the United States Government. In order to deny the legal value of the Mexican diplomatic protests, the United States claimed that Mexico was acquiescent and the United States managed to establish peaceful, undisturbed, uninterrupted and unchallenged possession over the "Chamizal Tract". However, it was found in the arbitration that there was no United States prescription:[253]

> 'Under these circumstances the commissioners have no difficulty in coming to the conclusion that the plea of prescription should be dismissed.'

(h) Effectivités (sovereign activities)

Besides traditional title acquisition modes, a doctrine called *effectivités,* which appeared in the middle of the twentieth century, could be applied. McHugo suggested that it was this that enabled Britain to gain title to *Minquiers and Ecrehos.* Here, the British won the case due to continuous possession of the islands against France, who in turn claimed title to the islands based on historical sovereignty going back to 933 AD. The Court, however, did not find it necessary to examine the history of the possession of the Islands during the Middle Ages. As McHugo has written:[254]

> 'The case shows how effective possession, with the intention and will to act as sovereign, will defeat any subsequent claim, provided it is maintained. The French claims would seem only to have been raised after Britain had already established good title, and maintained it by effective possession. The conduct of the parties in the more recent past can be seen as the crucial factor in the Court's mind, making it unnecessary to dwell on events in the Middle Ages.
>
> In the case of Ecrehos, the French case would have been further weakened by French's protests at alleged breaches of the 1839 Convention, which contained no claim of sovereignty in circumstances where one would have been expected, and this amounted to a damaging admission. In the case of Minquiers, the French case would also have been weakened by the 19th century admissions that the group belonged to Britain. On the contrary, British possession and the preponderance of British acts of sovereignty continued after France raised her claims.'

Yemen's stance resembled that of France in this case. It had lost actual possession whilst continuing to claim title as early as the year 933 AD. France could not prove effective occupation of islands that they had ruled before the British presence in 1309.[255]

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[253] *Chamizal Arbitration* (1911) *RIAA, vol. 2*; See Dixon and McCorquodale, *Cases & Materials on International Law* (2003) p. 238.

[254] McHugo, 'How to prove title to territory: a brief, practical introduction to the law and evidence', p. 22.

[255] McHugo writes: ' Britain was also able to show evidence dating from the Middle Ages. In 1309, proceedings indicated that a right to a presentation to the priory of Ecrehos (a right *in rem* under Norman Law) stemmed from the King of England…': p. 20

But what is effectivités? It refers to the actual possession of territory where a state claiming title to territory (whether *terra nullius* or not) proves that it has been exercising sovereign powers. Lee notes:[256]

> 'A state may also derive its title to certain territory through the effective control of such territory, a concept that is somewhat similar to prescription. Shaw further distinguishes effectiveness from prescription, since effectiveness may apply to terra nullius as well as to territory previously occupied.'

Lee notes that the degree of effectivités depends on the nature of the territory, whether it is inhabitable, populated or not, and whether it is an island or a continental territory: [257]

> 'The degree of effective exercise of authority is directly dependent on the ecological, climatic, geographical and other natural conditions of the claimed territory. The need for differentiating unpopulated or barely inhabitable territory from populated territory in assessing exercise of sovereignty has been widely recognised by international legal scholars and international tribunals. Therefore, the general requirement of effective control must be interpreted broadly to distinguish between continental and island territory, and particularly to distinguish between uninhabitable or barely inhabitable territories and territories suitable for permanent settlement.'

Lee indicates various cases - *Clipperton Island Arbitration (France/Mexico)*[258], the *Legal Status of Eastern Greenland (Denmark/Norway)*[259], the *Western Sahara Advisory Opinion*[260], and the *Eritrea-Yemen Arbitration*[261] - where effectivités was applicable.[262] Moreover, Huber in the *Award Island of Palmas* states: [263]

> 'Manifestations of territorial sovereignty assume, it is true, different forms, according to conditions of time and place.'

McHugo, in light of Huber's remark, suggests that a remote territory could be acquired by virtue of small manifestations of control: [264]

> 'What will constitute good evidence of title and maintenance of title will vary according to the nature of the territory in question. A state may acquire and maintain title to a barren and remote territory, or an uninhabited or sparsely populated island, with considerably less in the way of acts of sovereignty than would be necessary in the major centres of its political power. ... If the territory is remote, and was historically considered of small importance, surprisingly little may be adequate in order to establish and main title.'

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[256] Lee, 'Continuing Relevance of Traditional Modes of Territorial Acquisition in International Law and A Modest Proposal', pp. 16-17.
[257] Ibid., p. 17.
[258] *Clipperton Island Arbitration* (1931) *RIAA, vol. 2,* p. 1105 and p. 1109.
[259] *Eastern Greenland Case* (1933) *PCIJ Reports, ser. A/B*, no. 43, p. 46.
[260] *Western Sahara Advisory Opinion* (1975) *ICJ Reports,* p. 43.
[261] *Eritrea-Yemen Arbitration;* see the website of the Permanent Court of Arbitration for the full text of the Award: http://www.pca-cpa.org.
[262] Lee, 'Continuing Relevance of Traditional Modes of Territorial Acquisition in International Law and A Modest Proposal', footnote 128.
[263] *Island of Palmas Case* (1928) *RIAA 2.* Award is also included as an appendix to Jennings, '*The Acquisition of Territory in International Law*', p. 93.
[264] McHugo, 'How to prove title to territory: a brief, practical introduction to the law and evidence', p. 2.

Because of the uncertain legal status of the Rub' Al-Khali Desert[265], effectivités could be an important doctrine to apply. An application of effectivités needs to examine to what extent Saudi Arabia and Yemen managed to exercise authority over the territory, taking into account its nature. But there is very little information about this. The available information shows that the exercise of authority by Saudi Arabia took different forms over the history of the dispute in this area. For instance, one of the Saudi reasons for claiming title to the desert was the allegiance of Al-Murrah and other tribes living there, and to support this claim, it argued that Saudi Arabia collected zakat (religious tax) from inhabitants of the territory, as was the case in the *Buraimi Oasis Arbitration* in 1955.[266] Had Saudi Arabia and Yemen gone to arbitration in 2000, Saudi Arabia might have relied on collection of zakat as proof of sovereignty sought by effectivités.

In order to counter the Saudi claims to title, it could be pointed out that British officials did not recognise the collection of zakat as a manifestation of sovereignty over areas located beyond the Blue and Violet lines in 1934. Rather the British claimed that it was a kind of 'Danegeld pure and simple'; Fowle writes of two types of Saudi financial collections:[267]

> 'In the course of this letter and in the attached tables, mention has been made of "tribute" ("zakat") paid to the Wahhabis [Saudis]. There are two sorts of tribute which are paid to Ibn Saud. There is (a) that which is paid by the inhabitants of an area under Wahhabi occupation, which is of the same nature as taxes paid to any Government, and which is a recognition of Wahhabi rule. (b) There is also "tribute" which is exacted by Ibn Saud from sheikhs outside his kingdom under threat of raids or other unpleasantness. This, of course, is the modern blackmail, or the ancient Danegeld and is in no way a sign of submission to Wahhabi rule. Such tribute as is exacted by Ibn Saud in the territories east of the blue line is Dangeled, pure and simple.'

Could zakat have formed admissible evidence of the manifestation of sovereignty by Saudi Arabia before a tribunal? To be successful, the Saudi side would have had to show coherent evidence in relation to collection of zakat during years just prior to the arbitration and a lack of protest by Yemen. Once again there is not enough information about Yemen's protests against the Saudi presence in the years leading up to 2000 except some accounts of exchanged Saudi-Yemeni protests regarding oil companies' activities in some parts of the disputed territories.[268]

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[265] Ibid.
[266] See Saudi Official Appendix attached to Saudi Memorandum showing lists of names of tribes' men paying zakah to Saudi officials.
[267] *Document no R/15/1/603, Confidential Report no [E 4734/279/91]* dated 19th July 1934.
[268] See chapter 1.

Assuming that there were no protests by Yemen, and Saudi Arabia could prove zakat collection from Al-Murrah and other tribes living in the Rub' Al-Khali Desert, it is suggested that the claim of effectivités based on payment of zakat may have been accepted for two reasons. Firstly, the collection of zakat is a task of the Islamic state. As Kelsay writes:[269]

> 'The state has the task of collecting taxes and distributing funds. The religious community passes *judgement* as to which taxes can be collected.'

Zaman agrees that to collect zakat is a task of a Muslim state:[270]

> 'Apart from collecting zakat, the Muslim state is entitled to assess other types of taxes for social welfare purposes. Zakat is not strictly speaking a government "tax"-it is a religious levy bring distributive justice only'

Moreover, Zaman believes that territorial boundaries are important as they show where both the Islamic state and the individual can utilize their resources and to collect zakat which is one of those economic resources: [271]

> 'The term boundary refers to any or all of the following: "border", "limits", "bound", "confine", "end", and "frontier". Territorial boundary, therefore, defines the limit of the area in which individuals, groups, or societies exercise rights and/or controls. The existence of territorial boundaries provides the security that is needed to promote economic and social progress by making it possible for individuals to reap the benefits of their personal efforts and initiatives.'

Effective control depends on the nature of territory. As the Rub' Al-Khali Desert is occupied by a Muslim population, and Saudi Arabia is a Muslim state, it is argued that zakat collection is admissible evidence of title. Moreover, Fowle's remark shows that collection of zakat was a submission to Wahhabbi (or Saudi) sovereignty. But he denied Saudi collection of zakat beyond the Blue and Violet lines because this was taken by force. Fowle assumed that zakat is only collected by peaceful means. Yet, this is incorrect because, as Kelsay stated, the Muslim state has the task of collecting zakat and a state is permitted to use force to collect taxes. Furthermore, in history, the First Caliph (the first head of the Islamic State after the Prophet Mohammed), Abu Baker, waged war against tribes who refused to pay zakat that they used to pay during the time of the Prophet. Similarly, Saudi Arabia, due to inter-temporal law, in 1934, it is argued, would have been allowed to use force to collect zakat.

Secondly, an analogy can be made with the 2002 decision of the International Court of Justice which accepted Malaysia's claim that the regulation and control of the collection of turtle eggs from disputed islands by Malaysian fishermen was a sign of Malaysian effective

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[269] Kelsay, 'Civil Society and Government in Islam' (2002) in Hashmi (ed.) *Islamic Political Ethics: Civil Society, Pluralism, and Conflict,* p. 14.
[270] Zaman, 'Islamic Perspectives on Territorial Boundaries and Autonomy', in ibid., p. 87.
[271] Ibid., p. 80.

control or *effectivités* over the disputed islands. The ICJ awarded Malaysia title to the islands based on *effectivités*. The Judgement reads:[272]

> 'As evidence of such effective administration over the islands, Malaysia cites the measures taken by the North Borneo authorities to regulate and control the collecting of turtle eggs on Ligitan and Sipadan, an activity of some economic significance in the area at the time. It refer.s in particular to the Turtle Preservation Ordinance 1917, the purpose of which was to limit the capture of turtles and the collecting of turtle eggs "within the State [of North Borneo] or the territorial waters thereof". The Court notes that the Ordinance provided in this respect for a licensing system and for the creation of native reserves for the collection of turtle eggs and listed Sipadan among the islands included in one reserve.'

Therefore the Court concluded that 'the measures taken to regulate and control the collecting of turtle eggs and the establishment of a bird reserve must be seen as regulatory and administrative assertions of authority over territory which is specified by name.'[273] Furthermore the Court decided that 'given the circumstances of the case, and in particular in view of the evidence furnished by the Parties, the Court concludes that Malaysia has title to Ligitan and Sipadan on the basis of the *effectivités* referred to above.'[274]

Therefore, if Saudi Arabia or Yemen had managed to show effective control over any parts of the Rub' Al-Khali Desert, by providing information that state's acts were performed therein, the tribunal would have taken this evidence into consideration, leading to a better title claim to that area where the activities were performed.

In this regard there were other aspects of effective control that took place in the Rub' Al-Khali Desert in the years before 2000. Both Saudi and Yemeni forces' had a presence in the desert, as Al-Ghamid recorded on his map after he toured the area in 1996.[275] However, there is little other evidence of effective control available, except those already considered in the section on prescription.[276]

(i) Evidentiary value of maps

(i) The use of maps in international title and boundary disputes

Following the examination of Saudi-Yemeni claims and counter-claims based on different title acquisition modes in previous sections, this section will examine the legal impact of any

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[272] *Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia/Malaysia)* (2002) ICJ Reports, para. 143.
[273] Para. 145.
[274] Para. 149.
[275] See Appendix 2.10. However, Saudi Arabia removed all those locations according to the final settlement concluded in June 2000 in the Treaty of Jeddah; see chapter 5.
[276] See above.

relevant maps -showing disputed territories located within either party's territory- on the decision of an arbitral tribunal.

To illustrate, while Al-Dhumari's map[277], shows all of the disputed territories as a part of the Republic of Yemen, `Abdul Monem's map[278] shows the opposite. This section inquires into whether these two maps in addition to other maps would be considered in any arbitration proceedings.

Generally speaking, the evidentiary value of maps is secondary or collaborative in proving claims, whether boundary or title[279], as stated in Max Huber's Award in the *Island of Palmas* case[280] as well as in the decision of a chamber of the International Court of Justice in the *Frontier Dispute Case (Burkina Faso/Mali).*[281]

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[277] See Appendix 2.4.

[278] See Appendix 2.19.

[279] 'Maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps': *Burkina Faso/Mali Frontier Case*, ICJ Reports (1986), p. 583, para. 56.

[280] Huber said 'Among the methods of indirect proof, not of the exercise of sovereignty, but of its existence in law, submitted by the United States, there is the *evidence from maps*. ...Any maps which do not precisely indicate the political distribution of territories, and in particular the Island of Palmas (or Miangas)clearly marked as such, must be rejected forthwith, unless they contribute-supposing that they accurate-to the location of geographical names. Moreover, indications of such a nature are only of value when there is reason to think that the cartographer has not been merely referred to already existing maps-as seems very often to be the case- but that he has based his decision on information carefully collected for the purpose. Above all, then, official or semi-official maps seem capable of fulfilling these conditions, and they would be of special interest in cases where they do not assert the sovereignty of the country of which the Government has caused them to be issued.' see the *Island of Palmas Case,* pp. 852-853.

[281] *Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali*), (1986) ICJ Reports, p. 554, at p. 582, at para 54. The Chamber explained the legal stance of maps in international law: 'At the present stage of its reasoning the Chamber can confine itself to the present statement of principle. Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law within intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits; it is because such maps fall into the category of physical expression of the will of State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts.' See also *Delimitation of the Polish-Czechoslovak Frontier (Question of Jaworzina)*, PCIJ Reports (1923) Ser. B, No. 8, pp. 32-33. In this regard the Court said 'Maps and their tables of explanatory signs cannot be regarded as conclusive proof, independently of the text of the treaties and decisions.' For discussion of the issue see: Hyde, 'Maps as Evidence in International Boundary Disputes', (1933) *American Journal of International Law*, vol 27, p. 311; Weissberg, 'Maps as Evidence in International Boundary Disputes: A Reappraisal', (1963) *American Journal of International Law*, vol. 57, p. 781; Sandifer, Evidence Before International Tribunal (1939), cited by Weissberg footnote 12. He reported Sandifer saying '...maps can seldom, if ever, be taken as conclusive evidence in the determination of disputes which may arise concerning the

As maps cannot be accepted as an independent source of evidence, any maps possibly presented by Saudi Arabia and Yemen to an arbitration tribunal would only have a minor affect on title claims to the disputed territories. In addition, approval of those maps would depend on certain conditions, i.e. accuracy of information provided by maps, impartiality[282] of the cartographers and consistency between maps and other information sources, as observed by Huber in the Award in the *Island of Palmas* case and the ICJ chamber in the *Burkina Faso/Mali* case[283], as well as the ICJ Judgment of the 17th December 2002 in the *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*.[284] Absence of these conditions would result in rejection of those maps. As Huber explained:[285]

> 'If the Arbitrator is satisfied as to the existence of legally relevant facts which contradicted the statements of cartographers whose sources of information are not known, he can attach no weight to the maps, however numerous and generally appreciated they may be. The first required condition of maps that are to serve as evidence on points of law is their geographical accuracy. It must here be pointed out that not only maps of ancient date, but also modern, even official or semi-official maps seem wanting in accuracy.'

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location of the boundary.' See also Akweenda, 'The Legal Significance of Maps in Boundary Questions: A Reappraisal with Particular Emphasis on Namibia', (1989) *British Yearbook of International Law*, vol. 60, p. 205; McEwan, *International Boundaries of East Africa* (1971) pp.55-60; Taha, *International Law and Boundary Disputes (In Arabic)* (1999), p. 196.

[282] The chamber in *Burkina Faso/Mali case* elaborated this point: 'Other considerations which determine the weight of maps evidence relate to the neutrality of their resources towards the dispute in questions and the parties to that dispute. Since relatively distant time, judicial decisions have treated maps with a considerable degree of caution: less so in more recent decisions, at least as regards the technical reliability of maps. But even where the guarantees described above are present, maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps. In consequence, except when the maps are in the category of a physical expression of the will of the State, they cannot themselves alone be treated as evidence of a frontier, since in that event they would form an irrebuttable presumption, tantamount in fact to legal title. The only value they possess is as evidence of an auxiliary or confirmatory kind, and this also means that they cannot be given the character of a rebuttable or *juris tantum* presumption such as to effect a reversal of the ones of proof.', *Burkina Faso/Mali Case*, p. 583, at para 56.

[283] The chamber, in *Burkina Faso/Mali Case* emphasized the conditions required for approval of maps providing evidence: '55. The actual weight to be attributed to maps as evidence depends on a range of considerations. Some of these relate to the technical reliability of the maps. This has considerably increased, owing particularly to the progress achieved by aerial and satellite photography since 1950s. But the only result is a more faithful rendering of nature by the map, and an increasingly accurate match between the two. Information derived from human intervention, such as the names of places and of geographical feature (the toponymy) and the depiction of frontiers and other political boundaries, does not thereby become more reliable. Of course, the reliability of the topoymic information has also increased , although to a lesser degree, owing to verification on the ground; but in the opinion of cartographers, errors are still common in the representation of frontiers, especially when these are shown in border areas to which access is difficult.'; ibid.

[284] *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* ICJ Reports (2002) para 88.

[285] *Island of Palmas Case*; see appendix of Jennings, *The Acquisition of Territory in International Law*, pp. 106-107.

As there was never been a "White Book" published including maps relevant to the dispute between Saudi Arabia and Yemen, the author cautiously examines the following maps, taking into consideration scholarly opinions and judgements on the subject.

(ii) Evidentiary value of 'official' maps showing the Violet line as drawn on the map annexed to 1914 Anglo-Turkish Convention

It is safe to say that these maps[286] could be the most reliable in the context of the dispute for a number of reasons. Firstly, these maps were prepared by British officials, thus expressing the will of the British government regarding the location of Violet line and the Saudi-Yemeni boundary and title issue. This is supported by the opinion of the ICJ in the *Frontier Dispute between Burkina Faso/Mali*:[287]

> 'In consequence, except when the maps are in the category of a physical expression of the will of the State, they cannot themselves alone be treated as evidence of a frontier, since in that event they would form an irrebuttable presumption, tantamount in fact to legal title.'

Secondly, these maps are a copy of the official map annexed to the 1914 Anglo-Turkish Convention as mentioned in Article III.[288]

Therefore the map showing the Violet line not only reflects the British will but also that of the Ottoman Turkish Government, the other contracting party to the Convention of 1914. Being annexed to the treaty, the maps may be qualified as reliable evidence at least to allocation of title -if not exact boundary- of the `Rub Al-Khali Desert frontier.

Moreover, in support of this conclusion is the ICJ Judgement of the 10th October 2002 in the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Equatorial Guinea Intervening)* deciding the dispute over the Sapeo area in favour of Nigeria on the basis that a relevant map - appended to the Thomson-Marchand Declaration - coincided with evidence derived from the Logan-Le Brun *procès-verbal*.[289]

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[286] See Appendix 2.9 and 2.15.

[287] *Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali)*, para. 56.

[288] Full text is available at the Appendix of Treaties.

[289] *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Equatorial Guinea Intervening)* (2002) ICJ Reports, para. 144. The Judgment says: 'The Court will first address the Sapeo area. After carefully studying the maps provided by the Parties and Logan-Le Burn *procès-verbal*, the Court finds that, Nigeria claims, it is indeed the boundary described in that *procès-verbal* and not that described in the Thomson-Marchand Declaration which was transposed onto the 1931 map appended to the declaration. The Court further notes that, in practice, Sapeo has always been regarded as lying in the Nigerian territory. Thus Sapeo was regarded as Nigerian in 1959 and 1961 plebiscites. While Cameroon has stated in its written pleading that it regarded as "insufficient" that various items of evidence presented by Nigeria as proof of its administration of the village of Sapeo, it has however not seriously challenged them. Cameroon has also never claimed exercise any form of

Furthermore, the ICJ's Judgment issued on the 20th June 1959 in the *Case Concerning Sovereignty over Certain Frontier Land* between Belgium and the Netherlands emphasized that maps attached to treaties and the descriptive minutes of the frontier annexed to this Boundary Convention between the states would enjoy the same binding force.[290]

Based on this reasoning, it can reasonably be concluded that if Yemen considered the Violet line as a base for claiming title and boundary to the `Rub Al-Khali Desert, it is likely that the maps attached to the 1914 Convention would be considered as relevant by a tribunal. Having said that, this does not mean that the title and boundary would be the same, because in 1955 Britain declared another line.[291]

(iii) Evidentiary value of 'official' Saudi maps showing the location of Saudi Arabian territory

The author is not aware of any official map prepared by the Saudi Arabian government for the purpose of submitting to any tribunal in case the Saudi-Yemeni dispute went to arbitration. However, there was an official map prepared in the 1950s under the orders of the Saudi Arabian government which claimed to depict Saudi territory and its political borders and it was submitted by the Saudi side in the *Buraimi Oasis* case.[292] The map was prepared by Abdul Monem. Its value stems from the fact that it was prepared by a cartographer working for Saudi Arabia, so his map could be understood to express the will of Saudi Arabia. Hyde explains:[293]

> 'The cartographer officially employed to portray the political limits of a particular state is usually cognizant of their scope. His map may, therefore, be taken as the embodiment of the full extent of its territorial pretensions. Thus a map published by a state, or under its auspices, or purporting to reflect its position, and which it has been disposed to utilize as a means of publicly revealing its position, may be fairly accepted as establishing that when issued it represented what that state deemed the limits of its domain.'

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administration over the village. The letter of 17 March 1979 from the Sub-Prefect of Poli Subdivision to the "Prefect of Benue Department" indicates that Cameron was aware of Nigeria's administration of Sapeo. The Court considers that in this area the Thomson-Marchand Declaration should be interpreted in accordance with the intention of its authors, as manifested on the map, appended thereto and on the ground, namely so as to make the boundary follow the course described in the Logan-Le Burn *procès-verbal*.'

[290] *Case Concerning Sovereignty over Certain Frontier Land*, (1959) ICJ Reports, p. 220.

[291] See chapter 2 and above.

[292] See The Buraimi Memorials, Map C.1 which is reproduced in Appendix 2.19.

[293] Hyde, 'Maps as Evidence in International Boundary Disputes', (1933) *American Journal of International Law*, vol. 27, p. 311.

This map, however, although official and consistent generally with other maps Saudi official institutions have prepared[294] cannot alone provide reliable evidence which can strongly support Saudi Arabia to obtain title to the `Rub Al-Khali Desert because the map is in conflict with 1914 Anglo-Turkish Convention's text and map. Since maps are a secondary source of evidence and cannot be accepted unless consistent with other forms of evidence, it is less persuasive. However, official Saudi maps of `Asir, Jizan and Najran may be considered since they are consistent with the provision of the 1934 Treaty of Taif allocating `Asir, Jizan and Najran to Saudi Arabia.

(iv) Evidentiary value of private maps prepared by Schofield and Al-Ghamdi showing the 1955 Independence line declared by Britain

As explained above[295], Schofield and Al-Ghamdi suggested that Britain declared a line in 1955 to be an international line between Saudi Arabia and then East Aden Protectorate after Britain and Saudi Arabia failed to conciliate their boundary conflict in the region. Schofield and Al-Ghamdi prepared maps which showed this line which is located to the south of Violet line but far north of the Saudi-alleged 'Hamza line'. This line declared by Britain in 1955 joined the Violet line at its western tip. Moreover, this line is close to that shown on the official British map submitted to the Buraimi arbitration.[296]

This line seems to affect the 1914 map depicting the Violet line, annexed to the 1914 Anglo-Turkish Convention, because it decreased the British, or later Yemeni, claim to territory. Hayed observes in regard to official maps prepared unilaterally to declare state's territorial claim in case of litigation:[297]

> 'Thus, in the course of a boundary arbitration the most obvious function of an official map issued under the auspices of a particular litigant may be that of holding that litigant in leash.'

This finding was supported by the opinion of the Judicial Committee of the Privy Council issued in 1927 in the *Canada-Newfoundland Boundary Dispute in the Labrador Peninsula* after the examination of various maps. The finding - as quoted from Hayed - reads: [298]

> 'The maps here referred to, even when issued or accepted by departments of Canadian Government, cannot be treated as admissions binding on that Government; for even if such an admission could be effectively made, the departments concerned are not shown to have

[294] For example, maps in books provided to School students, maps used by Saudi official television channels, and maps shown on various official forms and documents, such as the one shown as a background to National Citizenship cards provided to Saudi citizens.
[295] See chapter 2 and above.
[296] See Appendix 2.15.
[297] Hyde, 'Maps as Evidence in International Boundary Disputes', p. 315.
[298] Hyde, 'Maps as Evidence in International Boundary Disputes', p. 315.

> had any authority to make it. But the fact that throughout a long series of years, and until the present dispute arose, all the maps issued in Canada either supported or were consistent with the claim now put forward by Newfoundland, is of some value as showing the construction put upon the Orders in Council and statutes by persons of authority and by the general public in the Dominion.'

Therefore, even if Yemen claimed the Violet line, its claim may be weakened due to estoppel created by the British unilateral line shown on maps depicted by several authors including Schofield and Al-Ghamdi.[299]

In addition, during the Saudi-Yemeni negotiations Yemen prepared an oil concession block map which was broadly consistent with the 1955 Independence line.[300] This map could also be relied on by Saudi Arabia to, in the words of Hayed, hold Yemen on a leash. So title to territory north of the 1955 British line and south of the Violet line might be found in favour of Saudi Arabia, as in the British victory in the *Minquiers and Ecrehos* case between the United Kingdom and France. In this case the Court decided title to the islets in favour of the United Kingdom and supported its decision by making reference to a letter sent by French Ambassador to the British Foreign Office with charts one of which indicated Minquiers as British.[301]

(v) Evidentiary value of the private map by Al-Dhuamry showing territory of the Republic of Yemen

In the 1990s, Al-Dhumari privately prepared a map he called a 'Map of the Republic of Yemen'[302]. Although this shows the names of the disputed territories and locations therein, it is hard to say it could be accepted by a tribunal on several grounds. Firstly, the map shows `Asir, Jizan, and Najran as part of the Republic of Yemen. Yet, this map is in clear conflict with two international treaties: the map annexed to the Treaty of Lausanne[303] and the provisions of the 1934 Treaty of Taif. Al-Dumari's map also contradicts the map prepared by Britain in 1955 showing the Independence line. Secondly, it also provides information that contradicts the facts as depicted by the Yemeni official map on oil exploration blocks prepared in the 1990s. On these grounds, this map is very hard to accept as reliable evidence.

(vi) Conclusion on maps

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[299] See section on estoppel, above.
[300] See Appendix 2.11.
[301] See *Minquiers and Ecrehos Case,* ICJ Report (1953) p 47 at p 71. See also Weissberg, 'Maps as Evidence in International Boundary Disputes: A Reappraisal', pp 785-786.
[302] See Appendix 2.4.
[303] See Appendix 2.8.

After this brief examination one can say that maps are not normally expected to play a major role in arbitration but they could play a secondary role when they are found to respect the conditions discussed above. The most reliable maps are the 1914 Violet line map annexed to the 1914 Anglo-Turkish Convention and the map prepared by the British government in 1955 suggesting a modified boundary line which Yemen's oil concession map also depicted.

6. Conclusion

After this examination, it appears that Saudi Arabia had a stronger case in the dispute over title to `Asir, Jizan and Najran based on cession and supported by the application of *uti possidetis*.

However, in the Rub' Al-Khali Desert, Yemen had a more persuasive claim to title than Saudi Arabia, except to those areas located to the north of the 1955 Independence line. In this area, depending on the evidence before the Tribunal, Saudi Arabia could have claimed title by occupation, prescription, or effectivités, on condition that there was Yemeni acquiescence. As to areas located around the Saudi Hamza line, it seems very hard for Saudi Arabia to prove its title claims.

The next chapter examines the final settlement carried in the 2000 Treaty of Jeddah and examines whether or not the two states considered the applicable international legal principles when they concluded the settlement and, if so, to what extent.

Chapter 5

Final Settlement of the dispute according to the Treaty of Jeddah: analysis and subsequent developments

1. Introduction

Three months after the famous interview with Abu Dhabi TV (mentioned previously at the beginning of chapter 4) in which the President of Yemen demanded arbitration if his country's claims in the territorial sovereignty dispute were not accepted by the Saudi negotiators, President Salih declared that his country had reached a final and comprehensive resolution of the 66-year old border dispute. Accordingly, on the 12th June 2000, Saudi Arabia and Yemen signed the 'International Border Treaty between the Republic of Yemen and the Kingdom of Saudi Arabia'[1], also known as the Treaty of Jeddah. On this settlement one source writes:[2]

> 'One of the Middle East's seemingly most intractable and certainly most explosive border disputes gives every appearance of having ended. The border agreement signed between Yemen and Saudi Arabia in Jidda [Jeddah] on July 12, coinciding with the visit of Yemeni President 'Ali 'Abdullah Salih to Saudi Arabia, defines the border between the two countries from the maritime boundary in the Red Sea to the intersection of the common border with the Omani border, specifying border points which are to be identified and marked by an international company using global positioning technology. While the actual demarcation may take some time, the border as agreed is shown on an official map[3] and the agreement would seem to leave little room for continuing disagreement about where the border runs.'

The 2000 Treaty confirms the Treaty of Taif's provisions regarding Saudi title to `Asir, Jizan, and Najran. It also ended the Saudi-Yemeni dispute over the locations of missing border markers in the area between the Ras-Al-Kuwaj marker and the Jabal Al-Thar marker. The border markers were erected following the delimitation in the Treaty of Taif but were lost due to poor construction. To solve the dispute, the Saudi-Yemeni Joint Border Marker Committee was created under the 1995 Memorandum of Understanding[4], replaced by the Joint Technical Boundary Committee under the Treaty of Jeddah. In addition, the Treaty of

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[1] See Appendix 1.14.
[2] *The Estimate*, Vol. 12, No. 13, 30th June 2000, see http://www.theestimate.com/public/063000.html (last visited on 20th December 2000).
[3] See Appendix 2.20
[4] See Appendix 1.13.

Jeddah delimited the boundary in the Rub' Al-Khali Desert. The Treaty of Jeddah's new delimitation for the Saudi-Yemeni eastern frontier in the Rub' Al-Khali Desert area (located to the east of the formerly disputed missing Jabal Al-Thar boundary pillar and Oman) divides the title to the disputed territory between Saudi Arabia and Yemen. The line placed Al-Kharkher and Al-Wadiah in the Saudi side while Yemen received title to the majority of the territory, including Thamud.[5] The Treaty of Jeddah also defined the Saudi-Yemeni maritime boundary for the first time.[6] Ambassador Al-Madani, former Head of the Saudi delegation to the Saudi-Yemeni Joint Maritime Boundary Delimitation Committee observed that the Treaty of Jeddah was 'an amicable solution balancing interests of the two states'.[7] In this respect, Al-Enazy writes:[8]

> 'With respect to the maritime boundary, the Treaty of Jeddah repositioned the disputed land terminus point on the Red Sea coast to a point immediately on the southern edge of the Saudi port of Al-Muwassam, well to the north of both Saudi and Yemeni contested claims as shown in their respective official maps. As a result, Yemen not only gained complete sovereignty over the disputed coastal islet of *Duwaimah* but also obtained a strategically and economically important coastal strip with an even longer coastline than it had originally accepted under the Como agreement. Moreover, the resulting northward repositioning of the maritime boundary line under the treaty of Jeddah has added more than three thousand square kilometers to Yemen's territorial sea, including sovereignty over several important Red Sea islands like *dhu-hirab*. Although previously controlled by the Saudis, Yemen's confirmed sovereignty over this strategic island by the new allocative maritime line will, in the words of the Yemeni foreign minister, provide it with free direct access to open sea and international shipping lanes.'

He adds:[9]

> 'The Treaty of Jeddah constitutes a comprehensive settlement of the entire Saudi-Yemeni maritime and land boundary stretching from the tri-point of the Yemeni-Omani-Saudi land boundaries in the east to the tri-point of the Yemeni-Eritrean-Saudi maritime boundary in the Red Sea. The Treaty is composed of five articles and four annexes (three of the annexes contain sets of geographical coordinates, while the fourth deals with tribal grazing rights in the eastern border area). The first article of the Treaty reaffirms as "valid and binding on both parties the 1934 Treaty of Taif and its annexes including the [1937 joint commission boundary] demarcation report annexed to it" without any modification or amendment. The Treaty of Jeddah also reaffirms the 1995 Memorandum of Understanding, which itself confirmed the Treaty of Taif.'

This chapter aims to cover the following points:

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[5] See Al-Ghamdi's map in Appendix 2.14.

[6] However, this thesis is only concerned with the title to the disputed territories of Asir, Jizan, Najran and the Empty Quarter Desert and it does not consider in detail the disputes over land delimitation and maritime delimitation.

[7] Al-Madani, *International Law of the Sea as Applied by Saudi Arabia* (in Arabic) (2002) vol. 1, p. 179.

[8] Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" Concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000', pp. 167-168.

[9] Ibid., pp. 164-165.

1. What was the nature of the settlement (amicable or legal or both) and to what extent did it consider claims supported by international law.

2. Who obtained title over disputed territories: `Asir, Jizan Najran and the Rub' Al-Khali Desert?

3. To what extent did the Treaty of Jeddah respect the title and delimitation provided in the former treaties: the 1914 Anglo-Turkish Convention (as modified by the 1955 British line) and the 1934 Treaty of Taif?

4. How has the demarcation of the boundary based on the Treaty of Jeddah progressed?

5. How does the Treaty of Jeddah compare with the Treaty of Taif?

6 Can it be claimed that the Treaty of Jeddah has provided a sustainable resolution to the title/boundary dispute between Saudi Arabia and Yemen which will prevent any re-occurrence of the dispute in the future?

Before tackling these points, the final and comprehensive title settlement provided by the Treaty of Jeddah is explained.

2. The Treaty of Jeddah's provisions relevant to settlement of title to the disputed territories of `Asir, Jizan, Najran and the Rub' Al-Khali Desert

The final settlement of the disputed title to `Asir, Jizan and Najran territories was not directly addressed by the Treaty of Jeddah which simply confirmed the validity and enforceability of the provisions of the 1934 Treaty of Taif. As Article 2 of the Treaty of Taif explicitly stated that Yemen shall drop its claims to `Asir, Jizan and Najran, it is reasonable to suggest that through the conclusion of the Treaty of Jeddah, Yemen has totally withdrawn its revived claims to `Asir, Jizan and Najran (examined in the chapters 3 and 4). Therefore the disputed title to `Asir, Jizan and Najran was resolved in favour of Saudi Arabia. Article 1 of the Treaty of Jeddah stipulates:[10]

[10] Article I of the 1995 Memorandum of Understanding reads 'Both parties confirm their adherence to the legality and obligatory nature of the Treaty of Ta'if, signed on 6th Safar 1353 AH, corresponding to 30 May 1934 and its annexes — henceforth known as "the treaty"'. Although Yemen accepted that the Treaty of Taif was valid, the President of Yemen in his interview with Abu Dhabi TV in March 2000 raised doubts about his country's commitment to the Treaty of Taif if Saudi

> 'The two contracting sides affirm the necessity and validity of the Treaty of Taif and its appendices, including the reports of the borders attached to it. They also affirm their commitment to the Memorandum of Understanding signed between the two countries on 27 Ramadan 1415 AH [26th February 1995]'.

Yemen's admission that Saudi Arabia would have the title to `Asir, Jizan and Najran can also tacitly be found in Article 2(a) of the Treaty of Jeddah that re-delimited the line of the border where the markers were missing. This delimitation was based on Article 4 of the Treaty of Taif, albeit in more detail and supported by co-ordinates, which Treaty of Taif lacked. The direction of the boundary line in the Treaty of Jeddah delimitation emphasises that `Asir, Jizan and Najran are part of Saudi territory.[11]

Article 2 (a) of Treaty of Jeddah reads: [12]

Arabia would not accept Yemen's claims over the locations of missing boundary markers at Ras Al-Muwaj and Jabal Al-Thar and he justified his statement by saying that these two markers were created by the Treaty of Taif but went missing. Yemen's agreement to adhere to the Treaty of Taif (which was terminated in 1992) was in the hope that Saudi Arabia would accept the locations believed and claimed by Yemen. If not, Yemen would seek a resolution through arbitration because the Treaty of Taif and the MOU stipulated it as the mechanism for the settlement of disputes over the boundary. In 1998 El-Rayyes reported President Salih as saying that Yemen signed the Treaty of Taif under coercion and lost its territories (Jizan, Najran and Asir) which he could not accept as the President of Yemen; see Al-Rayes, *Southern Wind: Yemen and its Role in Arabia*, p. 140. Moreover El-Rayyes reported that Yemen considered the Treaty of Taif 'abrogated' in September 1992 unless renewed because Article 22 of the Treaty of Taif stipulated that it would be valid for a renewable 20-lunar year term. In 1973 the Saudi-Yemeni leaders declared that the Treaty of Taif was considered valid for good but such a declaration was later denied by the Yemeni leadership. Ibid., p. 139 and chapter 3. Moreover, in 1999 Al-Wajih, a Yemeni lawyer, expressed his view based on an analysis of international law that the Treaty of Taif did not recognise a title to Saudi Arabia over Asir, Jizan and Najran, and furthermore that the Treaty of Taif was null and void *ab initio.* Al-Wajih argued that Yemen had reserved its legal title to these territories which were 'illegally occupied' by Saudi Arabia and he called for a new treaty to replace the Treaty of Taif that would recognise Yemen's title over these territory; see Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in Light of British Role Based on Published Documents (in Arabic),* pp.251, 253-257. Actually Al-Wajih explicitly called on the two states to have their dispute setteled by arbitration because he thought that negotiations had proved 'unsuccessful' since their outset in 1992, p. 255. See also the section on coercion in chapter 3 and the section on conquest in chapter 4.

[11] See map at Appendix 2.18.

[12] Because the Treaty of Jeddah, like the Treaty of Taif, was written in Arabic only, differences are noticed in translated copies of the Treaty of Jeddah. The Treaty of Jeddah's translated copy in this page is borrowed from the English copy posted by the Yemen Government's website of National Centre of Information at:
http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/about%20yemen/agreements/The%20Treaty/JEDDAH.htm (lasted visited on 20th December 2004). Another translated concise version of the Treaty of Jeddah is published by United Nations. In this translated version Article 2 reads: 'The definitive and permanent boundary line between the Republic of Yemen and the Kingdom of Saudi Arabia shall be established as follows:
(a) First section: This section begins at the coastal marker on the Red Sea (precisely at the sea wall, Ra's al-Mu'wajj Shami, Radif Qarad outlet) at latitude 16° 24' 14.8" north and longitude 42° 46' 19.7" east, and it ends at the Jabal al-Tha'r marker at coordinates 44° 21' 58.0" east and 17° 26' 00.0" north. The coordinates [of the intermediate markers] are given in detail in annex:

'The final and permanent demarcation line [to be demarcated] of the borders between the Republic of Yemen and the Kingdom of Saudi Arabia is defined as follows:

a) The first part: This portion begins from the coastal marker on the Red Sea (precisely at the quay of Ra's al-Ma'uj Shami, Radif Qarad outlet) and its co-ordinates are as follows: latitude 16, 24, 14, 8 north, and longitude 42, 46, 19, 7 east; it ends at the marker of Jabal al-Thar, whose co-ordinates are 44, 21, 58 east and 17, 26, 0 north (its details are shown by the co-ordinates in Appendix 1). The nationality of the villages lying on the course of this part of the line will be defined according to what was stipulated by the Treaty of Ta'if and its appendices, including their tribal affiliation. In the event that any of the co-ordinates falls on the position or positions or villages of either party, the reference point for establishing the affiliation of this village, or these villages, will be its relationship to one of the two parties, and the course of the line will be amended accordingly when the border marker is set.'

It is worth mentioning that Article 2 explicitly describes the boundary line as 'the final and permanent demarcation line' which supports the writer's view that until the conclusion of the Treaty of Jeddah, Yemen had a legal claim to title to `Asir, Jizan and Najran and it had disputed the validity of the Treaty of Taif to support this claim. This view is also supported by the Estimate's comments on the Treaty of Jeddah:[13]

'On that issue, the Saudis seem to have won a point. And, as had been agreed as long ago as 1995, the treaty also enshrines the previously negotiated boundary set by the Ta'if Agreement of 1934, which had originally been agreed only for a period of 20 years. Saudi Arabia has long suspected that Yemen still harbored irredentist sentiments towards what some Yemeni nationalists call the "lost provinces" of Jizan and Najran, annexed by Saudi Arabia in 1934. By declaring that the "final and permanent" border between the two countries follows the Ta'if line, any lingering Yemeni claims to the territory north of that line are ended. That, too, was a Saudi goal.'

By saying the line was 'permanent' it could be said that Yemen reappraised its stance; Al-Enazy suggests:[14]

'Under Article 1 of the Treaty of Jeddah, Yemen appeared to have finally acceded to the principal Saudi demand for resolving the boundary dispute by formally recognizing the 1934 Treaty of Taif, specifically Articles 2 (establishing Saudi sovereignty over the disputed regions of Asir, Jizan, and Najran) and 4 (establishing a final and permanent boundary line). In return, Saudi Arabia agreed to concede virtually all its other substantial land and maritime territorial claims outside the 1934 boundary line.'

He provided a further historical background to the issue by saying:[15]

I. The identity of the villages located along the path of the line in this section, including their tribal affiliation, shall be determined in accordance with the provisions of the Treaty of Taif and its annexes. In the event that any of the coordinates should coincide with the location of a village, the frame of reference for establishing its possession shall be its association with one of the parties and the path of the line shall be modified accordingly when boundary markers are put in place.' ; See http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/YEM-SAU2000IBT.PDF (lasted visited on 20th December 2004).

[13] *The Estimate*, vol. 12, no. 13, 30th June 2000, see http://www.theestimate.com/public/063000.html (last visited on 20th December 2000).

[14] Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" Concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000', pp. 166-167.

[15] Ibid., p. 161.

> 'The long-running boundary dispute between Saudi Arabia and Yemen can be traced back to the controversial Mecca agreement signed in 1926 under which the territory of the south west Arabia Idrisi emirate, long claimed by Yemen, came under the sovereignty of the newly established state of Saudi Arabia. The ensuing dispute over the sovereignty of the former Idrisi territory (comprising the regions known as Asir, Jizan and Najran) led to the brief Saudi-Yemeni border war that was concluded in May 1934, with the Treaty of Taif. That treaty was not comprehensive and proved only partially successful. On June 12, 2000, Saudi Arabia and Yemen concluded a new international boundary treaty.'

Moreover the International Boundary and Security Bulletin's commentary report on the Treaty of Jeddah emphasised the fact that the Treaty of Jeddah put an end to the former Yemeni's claim that the Treaty of Taif had no effect and Yemen deserved title to `Asir, Jizan and Najran. It says:[16]

> 'Saudi Arabia's gains are made in the west. These gains are essentially political, since in practice the border was established by the Treaty of Taif in 1934 and physical control had not changed the boundary line since then (except, of course, for problems stemming from the fact that so many original boundary markers have disappeared since 1934 that it appears locals on either side were not always very clear as to just where the boundary was supposed to lie).
>
> The Saudis secured an acknowledgment that in this sector the Treaty of Taif is permanently binding. This put an end to the assertions in some Yemen quarters that since the Treaty required 20 year extensions, and had not secured a second formal extension in 1974 [1973], it could therefore be argued that it had lapsed and that Yemen need no longer acknowledge the cession to Saudi Arabia under the Taif treaty of the provinces formerly belonging to the Imamate of Yemen, the forerunner of the old North Yemen, notably Asir, and Najran.'

However, although Article 2(b) of the Treaty of Jeddah placed Al-Wadiah, Al-Kharkheer and Najran's eastern frontier in Saudi Arabia's territory, it also provided Yemen with most of the territory in the eastern frontier in the Rub' Al-Khali Desert including some areas where Saudi Arabia had managed to establish its presence[17]. Therefore, Yemen acquired Saudi recognition of vast areas of land located beyond the line declared by Britain on 4 August 1955. It is noted that Saudi Arabia's gain of Al-Wadiah is supported by the 1914 Anglo-Turkish Convention and the Saudi gain of Al-Kharkheer is supported by the British-declared 'independence line' of 1955 which could be considered as an acceptance of British's abandonment of title to some areas to the south of the Violet Line and north of the independence line; this outcome is consistent with the analysis of the legal claims in Chapter IV.

Article 2 (b) of Treaty of Jeddah reads:[18]

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[16] Roberts, 'The Saudi-Yemeni Boundary Treaty' (2000), *Boundary and Security Bulletin*, p. 72.
[17] See Al-Ghamdi's Map on Saudi-Yemen locations in the eastern frontier in Appendix 2.14.
[18] This is the English translation of the Treaty of Jeddah posted by Yemen's National Information Centre.

> 'The second part: This is that portion of the border line which has not yet been defined but the two contracting parties have agreed to define this part amicably. This part begins at Jabal al-Thar (co-ordinates defined above) and ends at the geographical point of intersection between the line of latitude 19 north and the line of longitude 52 east (details of its co-ordinates are set out in Appendix 2).

This delimitation is depicted on the Treaty of Jeddah's Map.[19]

In this regard Roberts explained:[20]

> 'Judging by apparent claims to the deserts of the northern Hadhramaut [formerly Eastern Aden Protectorate], the Yemeni came off best in the vast sector of the frontier. When the treaty was announced, the Yemeni were in no doubt that they had achieved a great success. Yemeni newspapers spoke of 35,000 square kilometres of territory being incorporated into the country – or originated. The exact wording is itself a matter of interest, for what verb do you use when neither side really knew who actually owned so much of these borderlands before the treaty settled the matter?'

Moreover, he comments on the area located between the end of the Violet line and the Jabal Al-Thar marker which he calls the 'centre or unclaimed area' by saying:[21]

> 'In the centre, it looks as if the last unclaimed territory has now been formally incorporated into Yemen. This is an appropriate outcome since, according to the issue, it was indeed once part of the Emirate of Shabwa, and Shabwa was, and is, an integral part of the modern state of unified Yemen. The existence of the territory was identified in the early 1990s by Richard Schofield, then IBRU researcher. Its existence stems from the fact that presumed Saudi claim lines and presumed Yemeni claim lines (both based on border lines proposed by the two sides during the era of British colonial rule in southern Yemen), leave a 5,000 km^2 triangle of territory in the vicinity of the tribal lands of the Bani Seyyar outside the presumed claim lines of either side. The new boundary also appears to make it clear that Yemeni territory covers the entirety of oil block 5, Jana. From some maps, it had appeared that Saudi claims at this point came quite far south, carving a deep 'V'-shaped insert into Yemen in the vicinity of Marib and Shabwa and shaving part of Jana block.'

Such delimitation required Saudi Arabia to remove its installations from the areas to the south of this line. This withdrawal was also mentioned by Al-Enazy:[22]

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[19] See Appendix 2.18.

[20] Roberts, 'The Saudi-Yemeni Boundary Treaty', p. 70. It is noted that this area is located east to Jabal Al-Thar marker and treated as part of the Empty Quarter Desert frontier covered by the 1914 Violet Line as modified by the 1955 British line. It is located in the area where Saudi Arabia was reported as protesting against foreign oil companies who were granted oil concession licenses by Yemen in 1992. As Roberts said 'More importantly, in effect it confirmed Yemen's right to award a string of oil concessions in the regions north of the Wadi [valley] Hadhramaut. This is particularly important to Canadian Occidental, the company which is now emerging as Yemen's biggest oil producer and which currently holds the concessions for a string of blocks along or close to the new northern frontier (Nos. 11, 12, 36, 50 and 54). Above all, along this eastern sector of the boundary, it lifts the weight of Saudi intervention which caused problems for various oil companies in 1992/3, when they received letters from the Kingdom warning that they were operating in disputed territory, and in a minor way throughout most of the rest of the 1990s as Saudi border patrols operated in areas for which Yemen had awarded concessions.', p. 71.

[21] Ibid., p. 71.

[22] Al-Enazy, 'The International Boundary Treaty "Treaty of Jeddah" Concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000', p. 167.

> 'With respect to the land boundary, the new line established under the Treaty of Jeddah in the second segment has been redrawn to satisfy most of Yemen's territorial claim. As a result, Yemen gains an area rich in oil and gas reserves that covers more than forty thousand square kilometers in the eastern sector, an area which the Saudi government formally pledged to "return" to Yemen by February 2000. The general east-north direction of this agreed line, however, does swerve briefly in a south-westerly direction so as to skirt the Saudi border towns of Sharawrah, Wadi'ah and Kharkhair, which remain under Saudi sovereignty according to the terms of the treaty. However, under the military redeployment provisions of the treaty, the military bases in these villages are to be dismantled, consequently forcing the relatively large civilian population whose livelihood depended on the bases to relocate and abandon these once-thriving desert settlements.'

The acquisition of title over this vast area in the Rub' Al-Khali Desert frontier is also observed by the Estimate:[23]

> 'The main gain for Yemen, at least aside from any economic concessions which may unofficially accompany the treaty, is territory. The most extreme Saudi claims, shown on some Saudi maps, claimed territory deep within what most people have long considered Yemen. The conventional undefined border shown on most maps, in fact, gave Yemen less territory than it has gained in the treaty. Yemeni spokesmen say that the treaty has given Yemen an additional 35,000 square kilometers of land, though it is not totally clear how this was computed since there was no previously agreed border along most of the distance.'

Moreover, the Treaty of Jeddah has four appendices. The first includes the co-ordinates of boundary locations formerly delimited by the Treaty of Taif while the second stipulates the co-ordinates of the boundary line from Jabal Al-Thar to the Saudi-Yemeni-Omani tripartite border. The third appendix includes co-ordinates of the maritime boundary. The fourth appendix is on the organisation of pastoral rights, the designation of the positions of armed forces along the second section of the border, and the exploitation of shared natural resources along the length of the land border. This thesis is solely concerned with the title dispute and its settlement. Therefore, these appendixes will not be thoroughly explored.

3. Nature of the settlement and the extent to which it supports the legal claims of the parties: the successful role of negotiation

The Treaty of Jeddah's settlement of the disputed title to `Asir, Jizan and Najran (as well as the delimitation of land and maritime boundaries) was a result of long and successful[24] negotiation started in 1992[25] and supported by the creation of several committees by the

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[23] *The Estimate*, vol. 12, no. 13, 30th June 2000, see http://www.theestimate.com/public/063000.html

[24] Although its success was doubted by Al-Wajih, *Asir in the Saudi-Yemeni Dispute: Examination of the Dispute over Title under International Law Rules and in Light of British Role Based on Published Documents (in Arabic)*, p. 255.

[25] Schofield reports 'Begging in the early 1990s, several Arabian states had accelerated efforts to develop hydrocarbon reserves in border regions, with Saudi Arabia the most prominent amongst them. Because of their politically sensitive location and remoteness, these fields had generally been ignored prior to this time. However, the economical imperatives of maximising production in flat oil market conditions and of compensating the maturation older fields began to outweigh such reservations. The need for precisely delimited boundaries seemed clear if exploration and development were to proceed

1995 Memorandum of Understanding. The role of negotiation was evident in the 2000 settlement. To understand this role the definition of negotiations is a prerequisite. Lauterpacht defines:[26]

> 'The simplest means of settling State differences and that to which States as a rule resort before they make use of other means, is negotiation. Indeed, the great majority of treaties of peaceful settlement recognise it as the first step towards the settlement of international disputes…'

It was not uncommon that the negotiation between the two parties took that much time, because the task of any negotiations, when involved in dispute settlements, is to provide a fruitful and direct channel of continued dialogue between the two disputing parties and by the end of it, the two parties would narrow the gap between the conflicting legal and political stances and reach a compromise in the conflict between their legal claims or political interests. This has been observed by many jurists who explored the role of negotiation in dispute settlement. For instance Darwin observed that:[27]

> 'Negotiations involve a continuing dialogue between the States parties to the dispute. In order to reach a solution, one side of the other must make and argue in support of proposals and counter-proposals until a proposal is made by one side and accepted by the other... The final position will normally lie somewhere between the two opening positions and an element of compromise will be involved.'

In view of the definition of negotiation, it is safe to conclude that the Treaty of Jeddah was a product of negotiation. Therefore, the distinctive features of negotiation were reflected on the settlement achieved in the Treaty of Jeddah. Irvin emphasised this characteristic of negotiation:[28]

> 'Negotiation may be distinguished from other peaceful means of settlement because it does not rely on a third party. Instead, the disputants rely on their bargaining power and negotiating skill to find a common ground somewhere between their respective positions.'

Negotiations are one of the non-legal and peaceful methods for the settlement of disputes mentioned by the United Nations Charter and agreed on by international jurists.[29] To illustrate, the United Nations Charter's Article 33 (1) reads:[30]

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smoothly and border incidents were not to occur. It was exactly with these considerations in mind that the Riyadh and San'a governments formally commenced negotiations for the first time on their common limits to territory in July 1992.' See Schofield, 'The International Boundary between Yemen and Saudi Arabia," in *Tension in Arabia: The Saudi-Yemeni Fault Line'*, pp. 16-17.

[26] Lauterpacht, *Oppenheim's International Law* (1952), 7th ed., vol. II, pp. 6-7. See also Iklé, 'How Nations Negotiate' (1964), x, 3-4 as quoted from Whiteman, *Digest of International Law*, vol. 12, p. 931; Irvin, 'The Role of Law in the Negotiated Settlement of International Disputes', *The Vanderbilt International Vanderbilt Journal of Transnational Law* (Winter 1969), p.58.

[27] Darwin, 'Negotiation', in *International Disputes : The Legal Aspects* (1972), p.77.

[28] Irvin, 'The Role of Law in the Negotiated Settlement of International Disputes', p. 58.

[29] Ibid., p. 64. Shaw, *International Law* (2003) pp. 914-929. Brownlie, *Principles of Public International Law* (1998) pp. 703-730. Brownlie writes 'Peaceful settlement is the only available

> 'The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.'

Shaw attempts to classify the peaceful methods for international dispute settlement mechanisms under the UN Charter. He explains:[31]

> 'Basically the techniques of conflict management fall into two categories: diplomatic procedures and adjudication. The former involves an attempt to resolve differences either by the contending parties themselves or with the aid of other entities by the use of the discussion and fact-finding methods. Adjudication procedures involve the determination by a disinterested third party of the legal and factual issues involved, either by arbitration or by the decision of judicial organs.'

Shaw describes negotiation:[32]

> 'It consists basically of discussions between the interested parties with a view to reconciling divergent opinions, or at least understanding the different positions maintained.'

Fleischhauer observed that negotiation has a double nature; it can be seen as a means for conclusion of international co-operation or as a method for dispute settlement:[33]

> 'Negotiation serves the purpose of achieving agreed solutions and is thus more than mere deliberation between States or governments. It is the normal means of transacting business between sovereign States as well as subject of international law in general. According to the number of participating subjects of international law, negotiation is either bilateral or multilateral.'

He further explains the negotiation role in dispute settlement:[34]

> 'Negotiations have been traditionally used for the settlement of international disputes, and Art. 33 of the United Nations Charter cites negotiations as one of the principal forms of peaceful settlement.'

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means. However, there is no obligation in general international law *to settle* disputes, and procedures for settlement by formal and legal procedure rest on the consent of the parties.' p. 703. See also Sohn, 'Peaceful Settlement of Disputes', in Bernhardt (ed.) *Encyclopaedia of Public International Law* (2000) pp. 154-156; he writes 'The seven means enumerated in Art. 33 of the United Nations Charter are the most common ones. The most common and ancient method for settling international disputes is through diplomatic negotiations. Patient negotiations between foreign offices can ordinarily solve all but intractable disputes, and in more complicated cases they can help narrow the issues to more manageable proportions. Accordingly, most treaties for the settlement of international disputes are limited to those disputes which it has not been possible to settle by diplomacy or direct negotiations. But when a deadlock is reached in the negotiations or there is no reasonable probability that further negotiations will lead to a settlement, then other means may be invoked by a party to the dispute.', pp.155-156. See also Merrills, *International Dispute Settlement* (1998) p. 2 footnote 1, who refers to the General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), 24 October 1970 reading "States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.'

[30] http://www.un.org/aboutun/charter/ (last visited on 20th December 2004).

[31] Shaw, *International Law,* p. 914.

[32] Shaw, *International Law* (1997) pp. 720-1.

[33] Fleischhauer, 'Negotiation', in Bernhardt (ed.) *Encyclopaedia of Public International Law,* p. 152.

[34] Ibid., p. 153.

Actually, negotiation as a dispute settlement means was indicated by the Treaty of Taif's Article 8 as 'friendly representations':

> 'The two high contracting parties mutually undertake to refrain from resorting to force in all difficulties between them, and to do their utmost to settle any disputes which may arise between them, whether caused by this treaty or the interpretation of all or any of its articles or resulting from any other cause, by friendly representations [negotiation]; in the event of inability to agree by this means, each of the two parties undertakes to resort to arbitration, of which the conditions, the manner of demand, and the conduct are explained in the appendix attached to this treaty. This appendix shall have the force and authority of this treaty, and shall be considered an integral part of it.'

The 1995 Saudi-Yemeni Memorandum of Understanding repeated the same provision requiring that negotiations were conducted by a joint committee for delimiting the boundary; arbitration was to be the solution if negotiations failed to achieve this goal. Article 3 reads:

> 'The current committee formed by both parties will continue in its tasks by specifying as necessary procedures and moves that will lead to the demarcation of the rest of the boundary, beginning [in the west] at Jabal al-Thar until the end of the two countries [in the east]: these should include agreement on the method of arbitration in case of disagreement between the two countries.'

Arbitration as an alternative means for settling a dispute if negotiations fail is common. As one writer comments on the relationship between negotiation and other means of dispute settlement (including arbitration):[35]

> 'In contrast to other forms of peaceful settlement such as conciliation and mediation, arbitration or judicial settlement of disputes, negotiation is distinguished by the absence of a neutral third party which could bring, suggest or even impose a solution. The absence of the third party element constitutes a certain weakness of negotiation as a means of securing the peaceful settlement of disputes. Therefore, in many cases, dispute settlement clauses in international treaties (Arbitration Clause in Treaties) provide for negotiation only as the first phase of dispute settlement procedure and permit the submission of the dispute to other forms of peaceful settlement such as conciliation, arbitration or judicial proceedings if the attempt to solve the dispute by negotiation has failed within a given time.'

Arbitration is particularly appropriate for title and boundary disputes due to the complexity of the issues involved in such disputes. Simmons notes:[36]

> 'Contrary to the notion of international law as ineffective in the absence of a supranational court whose decisions can be enforced through punishments that pierce the shield of sovereignty, border disputes offer an excellent way of surveying not only the variety of such mechanisms—ranging from decisions of the ICJ to the quasi-judicial methods examined in this study—but also why states adhere to the international legal principles that support them.'

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[35] Ibid., p. 153.

[36] Simmons, *Territorial Disputes and Their Resolution: The Case of Ecuador and Peru, Peaceworks,* (1999) p. 1.

It is important to note that state must choose their method of dispute settlement. In international law, title and boundary delimitation is subject to the mutual consent of concerned states. This was mentioned by International Court of Justice's Judgement of 1994 in the *Case Concerning the Territorial Dispute (Libya Arab Jamahiriya/Chad)*:[37]

> 'the fixing of a frontier depends on the will of the sovereign states directly concerned.'

The diplomatic settlement between Saudi Arabia and Yemen in the Treaty of Jeddah provides a successful example of negotiation as a means for settling a territorial sovereignty dispute without having recourse to arbitration. In this sense it can be contrasted with the legal settlement in the Eritrea - Yemen dispute over title to the Hanish Islands, settled by the *Eritrea - Yemen Arbitration* of the 9th October 1998[38] as well as other territorial sovereignty disputes.[39]

However, it does not follow that the Treaty of Jeddah settlement ignored those legal claims supported by international law which could have been relied upon by Saudi Arabia or Yemen in arbitration. For example, it was argued in chapter 3 that the Yemeni claim that the Treaty of Taif was not legally binding (due to coercion following the 1934 Saudi-Yemeni War) would not be accepted by arbitration and an arbitrator would enforce the Treaty of Taif against Yemen, granting title to the disputed territories to Saudi Arabia. It was also argued in chapter 4 that the Saudi argument regarding the Rub' Al-Khali Desert, rejecting the 1914 Violet line as modified by the 1955 British line, would not persuade an arbitral tribunal because the Saudi claim did not respect the rule of international law that colonial title/boundary delimitation treaties (in this case the 1914 Anglo-Turkish Convention) are binding on new successor states and so prevail unless the parties agreed otherwise or unless subsequent conduct changes the delimitation. In this regard, although the 1914 Anglo-Turkish Convention was applied in the Treaty of Jeddah, it seems that there is a similarity between the 1955 line (modification of the 1914 Violet line) and the Treaty of Jeddah line in

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[37] *Territorial Dispute Case* (1994) *ICJ Reports 6, para. 52.*

[38] Full text of the Award is posted by Yemen Government website of National Information Centre at http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/about%20yemen/agreements/Eritrea%20-%20Yemen%20Arbitration/Eritrea-Yemen%20Award%20phase%201/Eritrea-Yemen%20Award%20TOC.htm (last visited on 20th December 2004).

[39] See *Maritime Delimitation and Territorial Questions* (2001) ICJ Reports 40, and *Territorial Dispute Case* (1994) *ICJ Reports 6*. Simmons also observed 'In 1984, Argentina and Chile settled the Beagle Channel dispute, as well as a number of smaller border disputes in the 1990s, including the Laguna del Desierto settlement through arbitration in 1994; they are now in the ratification stage of an agreement on the Ice Fields in southern Patagonia. In 1992, El Salvador and Honduras settled a century-long disagreement over adjacent territory (with the exception of one small segment) through the International Court of Justice (ICJ).' See Simmons, *Territorial Disputes and Their Resolution: The Case of Ecuador and Peru,* p. 1.

the area starting from point 52 E 19 N to approximately 47 E 17 N but giving more areas located to north of 1955 line and Jeddah line to Yemen.

The Treaty of Jeddah line placed al-Wadiah inside Saudi Arabia; such a delimitation proved consistent with international law because the 1914 Violet line placed it inside Saudi territory. It was also observed that Britain recognised that Saudi Arabia had title over Al-Wadiah shortly after People's Democratic Republic of Yemen's troops invaded the area on 26-27 November 1969.[40] In this regard, the British Foreign and Commonwealth Office provided guidance to British diplomats in December 1969, a few days after the eruption of Saudi-southern Yemeni War over Al-Wadiah. The diplomatic confidential instruction reads:[41]

> '10. Although the frontier [Saudi-Southern Yemen] is not demarcated on the ground, it was defined in the Anglo-Turkish Convention of 1914. There is no doubt that Wadia is some 25 miles within Saudi territory by that definition and that the fighting broke out as a result of an armed incursion launched by the Southern Yemeni, for whatever reason, into Saudi Arabia.'

Likewise, it was suggested in chapter 4 that Yemen would gain title to areas located to the north of the Saudi-claimed line and south of the 1955 line because Saudi claims were not supported by international law which does not support a historical title against a treaty title. In this case, the 1914 Anglo-Turkish Convention gave title to territory to the south of the Violet line to Yemen but Saudi Arabia claimed this area due to historical title and tribal allegiance. However, the Saudi claim was not even supported by actual possession in those areas except those locations shown on the Al-Ghamdi Map.[42] Moreover, Yemen's acceptance of the validity of Treaty of Taif meant that Yemen (intentionally or not) dropped its historical title claims to the territories of `Asir and Jizan. It was wise of Yemen to withdraw former claims in relation to Greater Yemen and historical rights in 'lost provinces'

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[40] See *The Times,* dated 18 December 1969 report written by Martin, P. 'Saudi Arabian air power wins the day'. He writes ' Situated in the southern-west tip of Saudi Arabia, about 270 miles south of the principle cities of Riyadh and Jiddah, Al Wadiah is little more than a rocky hillock which has earned its status as a border post because Saudi border forces have pitched their tents in the dunes that role from priciple desert rout from the port of Aden, and its principle function has been to check the ageless smuggling trade and control the entry of tribes of the Bedouin whose endless wanderings inevitably see them straddling desert border. According to the Saudis the conflict began on November 26 when a big force of South Yemen armoured cars surrounded the Al Wadiah post and delivered a handwritten order to the 26 Saudi border guards to surrender. At the orders of their commander they resisted and several guards were wounded before the invading forces took 22 Saudi prisoners and captured the post. The role played by the Saudi Air Force cannot be over-estimated. It went into action on November 27, the day after the Southern Yemen "invasion", and built up to a gradual crescendo until eight days later it broke the back of the Yemen force with a day-long attack'

[41] Confidential Telegram No. Guidance 246 sent to certain missions dated 5 December 1969 called 'Saudi/Southern Yemen Border Clash, Document Ref. FCO 8/1110.

[42] Appendix 2.10.

especially after the *Eritrea – Yemen Arbitration* denied that Yemen[43] had a valid historical title over the islands apart from the Ottoman title over those islands. If Yemen sought title to `Asir, Jizan and Najran based on its alleged historic title, it would not have succeeded because the Ottoman also had title over `Asir and Jizan before the creation of the Idrisi State in 1915. Moreover, the claim to historical title would be in conflict with the Treaty of Taif of 1934, stipulating Saudi title to those territories. The International Court of Justice in its Judgement of the 10th October 2002 in the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria* denied acquisition of historic title in conflict with a previous title supported a treaty; the Court's Judgement reads:[44]

> 'Nigeria contends that the notion of historical consolidation has been developed by academic writers, and relies on that theory, associating it with the maxim *quieta non movere*. The Court notes that the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law. It further observes that nothing in the *Fisheries* Judgment suggests that the "historical consolidation" referred

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[43] The Eritrea – Yemen Award reads '31. Yemen, in turn, bases its claim to the Islands on "original, historic, or traditional Yemeni title". Yemen puts particular emphasis on the stipulation in Article 2.2 of the Arbitration Agreement, that "[t]he Tribunal shall decide territorial sovereignty in accordance with the principles, rules and practices of international law applicable to the matter, and on the basis, in particular, of historic titles." This title can, according to Yemen, be traced to the *Bilad el-Yemen*, or realm of Yemen, which is said to have existed as early as the 6th Century AD. Yemen advances, in support of this claim, map evidence, declarations by the Imam of Yemen, and what it refers to as "the attitude of third States over a long period".
32. Yemen contends that its incorporation into the Ottoman Empire, from 1538 to *circa* 1635, and again from 1872 to the Ottoman defeat in 1918, did not deprive it of historic title to its territory. Yemen asserts that the creation of the Ottoman *vilayet* of Yemen as a separate territorial and administrative unit constituted Ottoman recognition of Yemen's separate identity. It relies on the work of 17th, 18th and 19th Century cartographers who allegedly depicted Yemen as a separate, identifiable territorial entity. Further map evidence is adduced in support of Yemen's contention that the Islands form part of that territory.'
And the Tribunal rejected Yemen's claim based on historical title apart from Ottoman possession '143. Before leaving this study of the historical considerations, it is necessary to recall the question of ancient or historic Yemeni title, to which Yemen gave such crucial importance in the presentation of its case. It has been explained in this chapter that there are certain historical problems about this argument. First, there is the historical fact that medieval Yemen was mainly a mountain entity with little sway over the coastal areas, which were essentially dedicated to serving the flow of maritime trade between, on the one hand, India and the East Indies, and on the other, Egypt and the other Mediterranean ports. Second, the concept of territorial sovereignty was entirely strange to an entity such as medieval Yemen. Indeed, the concept of territorial sovereignty in the terms of modern international law came late (not until the 19th Century) to the Ottoman Empire, which claimed, and was recognized as having, territorial sovereignty over the entire region.
144. But there are other problems with the Yemeni claim to an ancient title, in particular the effect of Article 16 of the Treaty of Lausanne and the necessity of establishing some doctrine of continuity of ancient title and of reversion at the end of the Ottoman Empire.'; see Award of 9th October 1998 posted by Yemen on:
http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/about%20yemen/agreements/Eritrea%20-%20Yemen%20Arbitration/Eritrea-Yemen%20Award%20phase%201/Eritrea-Yemen%20Award%20TOC.htm (last visited on 20th December 2004).

[44] Para. 65, see Judgement text at:
http://www.icj-cij.org/icjwww/idocket/icn/icnjudgment/icn_ijudgment_20021010.PDF (last visited on 20th December 2004)

to, in connection with the external boundaries of the territorial sea, allows land occupation to prevail over an established treaty title.'

In sum, the Saudi-Yemeni settlement of the title claims according to the Treaty of Jeddah is of a political-diplomatic nature as a result of the dispute settlement mechanism deployed – mutual negotiation. However, it is not completely divorced from the legal claims which the states could have relied on in arbitration. The settlement reflects certain rules of international law in relation to title/boundary treaties and title acquisition modes as examined in chapters 3 and 4. Let us finish this analysis with the observation of Irvin:[45]

> 'In a negotiated settlement there is much less likelihood that the "decision" agreed upon by the parties will be based on international law or justified under it. Other than providing evidence of national behaviour, decisions reached by negotiation are therefore, not as precise indicants of international law as the decisions of arbitrators or judges... a signicant number of negotiated dispute settlements, when properly analyzed, can provide evidence of what the law is and how the law may have changed. This is especially true when the analysis reveals that law played an important role, either as a negotiating tool or as a framework for the settlement of the dispute.'

4. Progress of the demarcation based on the Treaty of Jeddah

The demarcation of Saudi-Yemeni boundary has been conducted on the ground in accordance with Article 3 of the Treaty of Jeddah which provides:

> '(i) Desiring to set markers (columns) on the line of the border starting from the point where the two countries' borders meet the borders of the fraternal Sultanate of Oman at the geographical point of intersection between the line of latitude 19 north and the line of longitude 52 east and ending exactly at the wharf of Ras Al-Mua'j Shami, Radif Qarad outlet (co-ordinates shown in Appendix 1), the two contracting parties will commission an international company to undertake a field survey of the entire land and sea borders. The specialised company carrying out the work and the joint team from the two contracting parties must follow absolutely the distances and directions between each point and the next one, and the other specifications which appear in the border reports attached to the Treaty of Ta'if. These provisions are binding on the two parties.
>
> (ii) The specialised international company shall undertake preparation of detailed maps of the line of the land border between the two countries. These maps, when signed by representatives of the Republic of Yemen and the Kingdom of Saudi Arabia, will be relied upon as official maps demarcating the border between the two countries and will become an integral part of this treaty. The two contracting parties will sign an agreement to cover the cost of work by the company commissioned to erect the markers along the land border between the two countries.'

In fulfilment of Article 3(i), it was reported that the joint Saudi-Yemeni Technical Committee in Charge of Demarcating Borders according to the Treaty of Jeddah agreed to hire a German company for carrying out the demarcation process by placing boundary

[45] Irvin, 'The Role of Law in the Negotiated Settlement of International Disputes', p. 72.

markers on the ground, accompanied with detailed maps as required by Article 3 (ii).[46] In January 2001, the two states signed a contract with the director general of the German Hanza Luftbeilda, the German company that had demarcated both the Saudi-Oman border[47] and the Yemen-Oman border.[48] The actual demarcation started on the 6th October 2001.[49]

On the 16th November 2002, it was reported that, Dr. Abdullah Al-Fadli, the chairman of the Yemeni delegation to the Saudi-Yemeni Border Demarcation Committee announced that the German company, Hanza Luftbeilda, had completed demarcation of the Saudi-Yemeni eastern frontier starting from the Saudi-Yemen-Omani tripartite point at 52E 19N to Jabal Al-Thar. The company had placed 273 markers, composed of 15 main markers and 166 signals; 150 of which are branch markers and 42 border signals.[50] Al-Fadli also announced that the demarcation of the area between Jabal Al-Thar and 'Alab was underway but there were difficulties due to the geography and the mountainous landscape which required helicopters to facilitate the demarcation process. However, he added that fifty per cent of the 293 border markers to be placed between Jabal Al-Thar and Ras Al-Muwaj border marker were already installed. He expected that the demarcation would be completed within the first half of 2003 and said that company carrying the demarcation had also prepared:[51]

> 'third phase of Ariel photographing of borders between the two states, according to which the new border maps would be laid.'

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[46] 'Saudi, Yemeni Committee Meets on Border Issue', ArabicNews.com, 10th January 2001, see: http://www.arabicnews.com/ansub/Daily/Day/010110/2001011013.html (last visited on 21 December 2004).

[47] 'Yemeni – Saudi Border Demarcation', ArabicNews.com, 25th August 2001, see: http://www.arabicnews.com/ansub/Daily/Day/010825/2001082514.html (last visited on 21 December 2004)

[48] 'Saudi Arabia - Yemen to Sign Borders Demarcation Agreement on Saturday', ArabicNews.com, 17th. January 2001, see http://www.arabicnews.com/ansub/Daily/Day/010117/2001011706.html (last visited on 21 December 2004). It added that 'the Saudi and Yemeni sides will [would] use the four border openings agreed upon between the bilateral military and technical committees besides discussing the extent of the need for other new openings and arrangements relating to conditions on the borders and the schedule for redeployment of military forces along the two sides of the borders.'

[49] 'Yemen, Saudi Arabia Demarcate Borders Today', ArabicNews.com, 6th October 2001. It was reported that 'Yemeni government sources said that the company it chosen with the Saudi government to demarcate their border and place border markers will [would] start today (Saturday) implementation of its works. The German "Hanzluft" company will start implementing the border markers between Yemen and Saudi Arabia. The sources said that the company which will demarcate the border line which is extended from the border meeting point of Yemen,. Oman and Saudi Arabia has completed all preparations relating to the technical aspects and that it will carry out construction works relating to border markers " al-Sareyat," according to the Jeddah treaty signed between the two countries in 2000.'

[50] 'Completing Border Demarcation in Eastern Area between Saudi Arabia, Yemen', ArabicNews.com, 16th November 2002: http://www.arabicnews.com/ansub/Daily/Day/021116/2002111609.html (last visited on 21 December 2004).

[51] Ibid.

On the 23rd February 2003, the Al-Watan newspaper reported that eighty per cent of the demarcation process had been accomplished.[52] According to the newspaper, Al-Fadli expected that the demarcation would be completed by the end of December 2003. However, in November 2004, Mr. Abdul-Al-Bari `Ajaln, a Saudi diplomat and also a member of the Saudi delegation to the Saudi-Yemeni joint committee, emphasised that the vast majority of the demarcation process had been accomplished except in a small mountainous area.[53] Due to the on-going process of demarcation, it is hard to collect further information on this matter and no further recent announcements have been made.

It was reported in July 2004 that Yemen, as a result of demarcation process and in pursuance of Annex 4 of the Treaty of Jeddah calling for the mutual withdrawal of military forces from lands subject to demarcation, had acquired over 40,000 square kilometres:[54]

> 'Yemen yesterday received five new border sites from Saudi Arabia of a total area of 40,000 square kilometers, according to Jeddah agreement for border demarcation which was signed in 2000 between the two states. On Sunday Sanaa got three border sites in the governorate of Hadramout including an airport over which the Yemeni flag was hoisted. The new positions include al-Kharkhir center and "al-Wajib" force in al-Badee area; the electricity station and telecommunications center, and Sirdab emirate center. Today, Sanaa will be handed over seven sites which are Um Ghareb, Um Gharib runway, al-Matif center, al-Akhashim center and al-Deheyah center and al-Deheyah village.
>
> These lands are equal to the total area of Switzerland or four folds the area of Lebanon. One Yemeni official said "some 40,000 square kilometers will return back to Yemen of which 35,000 are from the eastern areas of Hadramout.." He added that Yemen will also get 5,000 square kilometers in the western area which were organized according to al-Taif agreement in 1934 " which are mountainous areas where tribal lodgings are intermingled between the two countries."
>
> He added that a "joint committee was formed recently to deal with citizens issues on the borders especially the moves, properties and grazing on the two sides of the borders." One local Yemeni official said that Yemen will be also given "within two months other border sites in the western parts of the country including al-Tawal center in the trade road between the two countries."'

It is worth noting that since the resolution of the territorial dispute, the two states have made substantial progress on other issues[55] stemming from the political settlement concluded in the 2000 Treaty of Jeddah and reflected in the almost complete demarcation of the border.

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[52] Al-Watan Newspaper, No (877), 23 February 2003, see: http://www.alwatan.com.sa/daily/2003%2D02%2D23/politics/politics15.htm (last visited on 21 December 2004).
Al-Watan Newspaper, No (1134), 7th November 2003, see: http://www.alwatan.com.sa/daily/2003%2D11%2D07/first_page/first_page02.htm (last visited on 21 December 2004).

[53] Interview with the author, November 2004.

[54] http://www.arabicnews.com/ansub/Daily/Day/040713/2004071313.html

[55] Of those positive effects of the Saudi-Yemeni demarcation are appearance of joint co-operation in different fields: education (for instance, Yemen Prime Minister announced that there were 150

5. Strengths and weaknesses of the Treaty of Jeddah in comparison with the Treaty of Taif

Generally speaking, an examination of the Treaty of Jeddah indicates that the treaty is on the whole well drafted and it exhibits features which other international title/boundary treaties contain. For example, unlike the Treaty of Taif's double nature[56] – both dispositive due to inclusion of Articles 2 and 4 on title and boundary settlement over `Asir, Jizan and Najran and political due to inclusion of articles organising other affairs and interests - the Treaty of Jeddah, in common with other boundary treaties such as the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grand and Colorado River as the International Boundary between the United Mexican States and the United States of America[57] and its attached Minute no 257 'Completion of the Relocations of the Rio Grand stipulated in the Article I of the Treaty of November 23, 1970'[58], is of a purely dispositive nature, as it focuses solely on title/boundary delimitation and other rights connected to exercises of territorial sovereignty on the border. Another good comparison is the Treaty between the Republic of Austria and the Socialist Federal Republic of Yugoslavia Concerning the Common State Frontier, signed at Belgrade on the 8th April 1965[59]. The Treaty of Jeddah, like the Austrian/Yugoslavia's Treaty, is a purely dispositive treaty, delimiting the land frontier and defining cross-border territorial sovereignty rights. For example, Article 18 of the Austrian/Yugoslavia Treaty provided for exemption from tax on cross-border trafficking of vehicles registered in a contracting country and used in a project conducted in the other

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thousand Yemeni students attending Saudi schools and universities in addition to exchanged Saudi-Yemeni cultural delegations and holding cultural activities in the two states), see Asharq Al-Awsat Newspaper dated 14th December 2004. Also it was reported that the two states recently concluded a number of agreements boosting co-operation in 'mail services', 'treatment of dangerous waste', 'youth and sports activities', 'customs co-operation', 'infrastructure developments in Yemen', 'Islamic affairs', 'cultural affairs', 'agricultural and fishing affairs', 'land and marine transportations of passengers and goods', and 'combating Malaria in cross-border areas'. All these agreements were signed by Saudi-Yemeni officials during the meetings of the Saudi-Yemeni Co-operation Council on 11-12 December 2004 in Riyadh. The meetings were presided by HRH Prince Sultan bin Abdul Aziz (who agreed in 1973 with then-northern Yemen's Prime Minister Al-Hajri that the Treaty of Taif would be valid permanently) the Second Deputy Prime Minister, Minister of Defence, Aviation and Inspector General, and H.E. Mr Abdul-Qader Bajammal, Yemen Prime Minister (who as the Minister of Foreign Affairs signed the Treaty of Jeddah with his counter-part HRH Prince Saud Al-Faisal the Saudi Minister of Foreign Affairs). See Al-Watan Newspaper, No (1536) dated 13th December 2004 see http://www.alwatan.com.sa/daily/2004-12-13/first_page/first_page05.htm

[56] See chapter 3.

[57] Signed at Mexico City on 23 November 1970 and registered at the United Nations by the United States of America on 27 April 1978

[58] United Nations, *Treaty Series*, Vol. 830, p. 55 and annex A in Vol. 836. Also

[59] The treaty was registered by Austria on 21 January 1977. See United Nations, *Treaty Series*, Vol. 587, p 169.

contracting country.[60] Annex 4 of the Treaty of Jeddah also concerns cross-border rights although different from Article 18 of the Australian/Yugoslavia Treaty. The rights in Annex 4 of the Treaty of Jeddah are pastoral rights, the designation of the positions of armed forces beside the second part of the border line between the two countries, and the exploitation of shared natural wealth along the length of the land border line dividing the two countries. Appendix 4 of the Treaty of Jeddah provides:

> 'The international border treaty between the Kingdom of Saudi Arabia and the Republic of Yemen regarding the organisation of pastoral rights, and the designation of the positions of armed forces beside the second part of the border line between the two countries, as indicated in this treaty, and the exploitation of shared natural wealth along the length of the land border line dividing the two countries.
> (i)
> a) The pastoral area on both sides of the second part of the border line indicated in this treaty is limited to 20 kilometers.
>
> b) Shepherds from both countries may use the pastoral area and water sources on both sides of this part of border line in accordance with tribal traditions and prevailing customs for a distance not exceeding 20 kilometers.
>
> c) The two contracting parties shall hold annual consultations to set crossing points for the pastoral lands according to conditions and current prospects for pasture.
>
> (ii) Among the citizens of the Kingdom of Saudi Arabia and citizens of the Republic of Yemen, shepherds shall be exempt from:
> a) The system of residence and passports, and will be issued with transit cards by the competent authorities [of the countries] to which those shepherds are affiliated.
>
> b) Taxes and duties on personal belongings, foodstuffs and consumer goods that they carry with them. This does not prevent either of the parties from imposing customs duties on animals and commodities crossing for the purpose of trade.
>
> (iii) Each of the contracting parties may impose restrictions and regulations which they consider appropriate regarding the number of vehicles crossing on to their territory with shepherds, in addition to the type and number of firearms which shepherds may carry provided that they are licensed by the relevant authorities in both countries, together with the identification of those carrying them.
>
> (iv) In the event of that the outbreak of an epidemic disease affects animal wealth, each party has the right to take the necessary preventive measures and to impose restrictions on the import and export of infected animals. The specialised authorities in both countries should cooperate as far as possible to limit the spread of the epidemic.
>
> (v) It is not permitted to either of the contracting parties to position armed forces at a distance of less than 20 kilometres on either side of the second part of the border line indicated in this treaty, and the activity of any party is limited to movement of mobile security patrols with customary weapons.

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[60] Article 18 reads 'Article 36, paragraph 5, of the Frontier Treaty shall read as follows "(5) Motor vehicles, including trailers, which are registered in one Contracting State and are temporarily imported for execution of works under this Treaty in the other Contracting shall not be subject, for the duration of such period of temporarily import, to motor vehicle tax levied by that other State. Transport effected by such motor vehicles in the other State shall not be subject to taxation in that State.'

(vi) In the event of the discovery of shared natural wealth suitable for extraction and investment along the line of the border between the two countries, beginning precisely at the quay of Ra's al-Ma'uj Shami, Radif Qarad outlet, to the point of intersection of the line of longitude 19 east with the line of latitude 52 north**, the two contracting parties will undertake the necessary negotiations between them for the joint exploitation of that wealth.

(vii) This appendix is considered an integral part of this treaty and will be ratified by the methods authorised in the two countries.'

Being a purely dispositive treaty makes it less likely that the Treaty of Jeddah will be exposed to attempts by politicians to avoid the implementation of the delimitation and title rights, in sharp contrast to the Treaty of Taif.

In addition, the Treaty of Jeddah is not subject to a duration term; it is valid in perpetuity, a feature that other international title/boundary treaties share. This feature can be contrasted with the troublesome text of Article 22 of the Treaty of Taif calling for renewal on a 20-lunar year basis.[61]

However, the Treaty of Jeddah does not contain any provisions calling for its registration at international organisations, as Abu-Hulaigah,[62] head of the Constitutional and Legal Committee and Member of the Yemen Parliament, observed. This lacuna could be perceived as a weakness. However, it could be argued that registration of the treaty is already covered by Article 102 of the UN Charter[63] and other treaty/boundary treaties do not necessarily include registration clauses. Indeed, the Treaty of Jeddah was registered at the United Nations and the Arab League shortly after ratification took place.[64]

It is was also noted that the Treaty of Jeddah emphasized the validity of duration of the Treaty of Taif, including the provision on arbitration as a method for dispute settlement which was also indicated in the 1995 Memorandum of Understanding.

Abu-Hulaigah suggested that the Treaty of Taif and the Treaty of Jeddah formed one unified document. Ambassador Al-Madani, the former head of the Saudi delegation to the Saudi-Yemeni Joint Maritime Boundary Delimitation Committee, in an interview with the writer

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[61] Read Chapter 3 in relation to 'Termination Argument under Article 22'.
[62] Abu-Hulaigah, 'Legal Connection between Treaty of Jeddah and Treaty of Taif and arising effects', a paper presented during *Symposium of Yemen and its Neighbours from Boundary Disputes to Partnership*, held in San'a in 2000 by the Yemen's Constitutive Council.
[63] Article 102 (1) of the UN Charter provides 'Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.'
[64] See Delimitation Treaties Infobase, DOALOS/OLA – United Nations (accessed 16th October 2002).

suggested that Yemeni officials insisted that the document of the settlement be called a 'treaty' rather than an 'agreement' as they argued that the term 'treaty' was given to the Treaty of Taif and giving the same name to the new document 'treaty' would show consistency between the two agreements.

However, the Treaty of Jeddah's Annex 4 provided that the two states shall not deploy armed forces in areas within 20 kilometres on either side of the border line not covered by the Treaty of Taif. The demilitarised area in the territory covered by the Treaty of Taif is in comparison 5 kilometres.

6. Treaty of Jeddah 2000 and the prevention of future disputes

This raises a very important question: does the drafting of the Treaty of Jeddah prevent the return of title/boundary related disputes between Saudi Arabia and Yemen, given the fact that the two states agreed the Treaty of Taif in 1934 but continued to dispute border issues thereafter until the Treaty of Jeddah?

It is suggested that the Treaty of Jeddah 2000, combined with the Treaty of Taif, has provided a sustainable resolution to the dispute between Saudi Arabia and Yemen over title to `Asir, Jizan, Najran and the Rub' Al-Khali Desert frontier. However, the expectation that the Treaty of Jeddah would prevent all kinds of disputes relevant to the demarcation of the boundary or other exercises of territorial sovereignty rights in the boundary areas on both sides proved too optimistic. In fact, two such disputes have occurred.

A dispute over the Treaty of Jeddah occurred in 2000 when the Yemeni Waelah tribe immediately rejected the Treaty of Jeddah delimitation. The Waelah thought the delimitation provided in the Treaty of Jeddah had placed a part of their land under Saudi control. Furthermore, the Waelah tribe members attacked the camp of the German company carrying the demarcation in early 2002.[65] It is possible to place some blame on the drafting of the Treaty of Jeddah. Instead of checking the correct co-ordinates of Saudi and Yemeni villages and lands of tribes, the drafters agreed the co-ordinates to include in the Treaty of Jeddah as well as an amendment mechanism in Article 2 to change any incorrect co-ordinates:

> 'The final and permanent demarcation line of the borders between the Republic of Yemen and the Kingdom of Saudi Arabia is defined as follows:
> a) The first part: This portion begins from the coastal marker on the Red Sea (precisely at the quay of Ra's al-Ma'uj Shami, Radif Qarad outlet) and its co-ordinates are as follows: latitude 16, 24, 14, 8 north, and longitude 42, 46, 19, 7 east; it ends at the marker of Jabal

[65] See *Riyadh Daily News*, 14 September 2002, No. 12503.

> al-Thar, whose co-ordinates are 44, 21, 58 east and 17, 26, 0 north (its details are shown by the co-ordinates in Appendix 1). The [national?] identity of the villages lying on the course of this part of the line will be defined according to what was stipulated by the Treaty of Ta'if and its appendices, including their tribal affiliation. In the event that any of the co-ordinates falls on the position or positions or villages of either party, the reference point for establishing the affiliation of this village, or these villages, will be its relationship to one of the two parties, and the course of the line will be amended accordingly when the border marker is set.'

However, this issue has been settled. Moreover, it was not a dispute between the two states who have been determined to ensure the demarcation process continues and amendments were expected to be made during the demarcation process in accordance with Article 2.

One important dispute that has arisen between the two states occurred in early 2004, when Saudi Arabia built a security barrier (or wall) within the 20 mile demilitarised area on the Saudi side of the border. On this incident Whitaker writes:[66]

> 'One of the world's oddest security barriers - a pipeline almost 10 feet high, mounted on posts and filled with concrete - has appeared unexpectedly on the Saudi-Yemeni border'

Yemen protested against the construction of the barrier, claiming it was a violation of Appendix 4 of the Treaty of Jeddah which calls for demilitarisation of an area of 20 kilometres on both side of the border between Jabal Al-Thar and Saudi-Yemen-Oman tripartite border point. A Yemeni official was reported as saying:[67]

> 'The problem is not building the barrier, it is the violation of the agreement. They can build whatever they like in their land after the no-man [20-km] zone'

However a senior Saudi official was reported to say that the barrier was being built inside Saudi Arabia, although a Yemeni source protested because it was built just 100 meters from the boundary:[68]

> 'The head of Saudi Arabia's border guard, Talal Anqawi, said last week that the barrier is being constructed inside Saudi territory but did not specify exactly where. A report in the Yemen Observer, however, claimed that it was only 100 metres from the border line.'

Appendix 4 (v) of Treaty of Jeddah provides:

> 'It is not permitted to either of the contracting parties to position armed forces at a distance of less than 20 kilometres on either side of the second part of the border line indicated in this treaty, and the activity of any party is limited to movement of mobile security patrols with customary weapons.'

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[66] Whitaker, B. 'A Wall of Its Own', published in Middle East International, 20 February 2004, found at http://www.al-bab.com/yemen/artic/mei98.htm (last visited on 21 December 2004).
[67] Ibid.
[68] Ibid.

In contrast the Treaty of Taif's restriction on military emplacement was only 5 kilometres in the western area between Jabal Al-Thar and Ras-Al-Muwaj markers. Article 4 of the Treaty of Jeddah provides:

> 'The two contracting parties affirm their commitment to Article 5 of the Treaty of Ta'if regarding the withdrawal of any military position which is less than five kilometres from the line of the border as defined according to the reports of the border attached to the Treaty of Ta'if. In respect of the border line which has not yet been defined, starting from Jabal al-Thar up to the point of intersection of latitude 19 north with longitude 52 east, it is determined by Appendix 4 accompanying this Treaty.'

Saudi Arabia built the wall in order to prevent the smuggling of drugs and weapons following police investigations which found that the weapons used in terrorist attacks on several compounds in Riyadh in May 2003 were smuggled from Yemen through the border:[69]

> 'Saudi Arabia, which has reportedly completed the first 25-mile stretch of what could turn into a 1,500-mile frontier obstacle running across mountains and desert, says the structure will help to stop militants and weapons flooding into the kingdom from its southern neighbour.
>
> Saudi border patrols say they intercept weapons smuggled from Yemen almost every day. These include 90,000 rounds of ammunition and 2,000 sticks of dynamite seized since the suicide attacks on housing compounds in Riyadh last May [2003].'

The dispute was settled when Saudi and Yemeni senior officials agreed to tighten security measures on the border and Saudi Arabia agreed to remove the barrier. The friendly solution was indicated by the Yemeni President who was reported as saying:[70]

> 'It is a question that is going to be sorted out in a friendly way between the two countries.'

It is suggested that neither state should be prevented from building a security barrier because the 5 and 20 kilometres restriction is applicable to armed forces, not pure crime-prevention measures. In fact cross-border smuggling crimes are common between Saudi Arabia and Yemen. For example, on the 20th December 2004 Al-Watan Saudi newspaper reported that Saudi security staff prevented an attempt to smuggle 173 Kg of Hashish from Yemen to `Asir and Jizan. Therefore, it is suggested that Saudi-Arabia and Yemen add a protocol to the Treaty of Jeddah which defines what activities a state is allowed to undertake in its crime prevention efforts and therefore which does not fall within the prohibition on armed forces on the border by the Treaty of Taif and Treaty of Jeddah.

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[69] Ibid.

[70] Whitaker, B. 'A Wall of Its Own', published in *Middle East International*, 20th February 2004, found at http://www.al-bab.com/yemen/artic/mei98.htm (last visited on 21st December 2004).

7. Conclusion

The Saudi-Yemeni title disputes over `Asir, Jizan, and Najran were totally settled according to the Treaty of Jeddah that decided that the Treaty of Taif's title settlement would be permanent, as suggested in chapters 3 and 4. The Treaty of Jeddah also decided the course of the frontier line in the Rub' Al-Khali Desert in a way that left some areas (Al-Wadiah and Al-Kharkheer) within Saudi territory as suggested in chapter 4. Yemen, in turn, received the vast majority of the Rub' Al-Khali Desert, as also suggested. Therefore, although the Treaty of Jeddah is a political settlement, it is not devoid of legal dimensions.

It is also important to note that the Treaty of Jeddah is better drafted than the Treaty of Taif, although the two treaties are complementary. However, a further enhancement to the Treaty of Jeddah is suggested to prevent any future disputes between the two parties.

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Appendix 1

Important Treaties and Instruments

British-Ottoman Draft Convention on the Persian Gulf Area - 29 July 1913

I. Kuwayt

Article 1.
The territory of Kuwayt, as delimited in Articles 5 and 7 of its convention, constitutes an autonomous kaza of the Ottoman Empire.

Article 2.
The Shaykh of Kuwayt will hoist, as in the past, the Ottoman flag, together with the word "Kuwayt" inscribed in the corner if he so wishes, and he will enjoy complete administrative autonomy in the territorial zone defined in Article 5 of this Convention. The Ottoman Imperial Government will refrain from interference in the affairs of Kuwayt, including the question of succession, and from any administrative act as well as any occupation or military act, in the territories belonging to it. In the event of vacancy, the Ottoman Imperial Government will appoint by Imperial ferman a kaymakam [governor of a kaza] to succeed the deceased Shaykh. It will also have the power to protect the interests and the natives of other parts of the Empire.

Article 3.
The Ottoman Imperial Government recognises the validity of the conventions which the Shaykh of Kuwayt previously concluded with the Government of His Bitannic Majesty, dated 23 January 1899, 24 May 1900, and 28 February 1904, the texts of which are annexed (Annexes I, II, III) to the present Convention. It also recognises the validity of land concessions made by the said Shaykh to the Government of His Britannic Majesty and to British subjects, and the validity of the pledges included in the note of 24 October 1911, sent by H. M.'s Principal Secretary of State for Foreign Affairs to His Imperial Majesty the Sultan's Ambassador in London, the text of which is annexed (Annex IV).

Article 4.
With a view to confirming the understanding already established between the two Governments following the exchange of assurances dated 6 September 1901, between the embassy of His Britannic Majesty at Constantinople and the Imperial Ministry of Foreign Affairs, the Government of His Britannic Majesty declares that, since no change will be effected by the Ottoman Imperial Government in the status quo of Kuwayt, as defined in the present Convention, it will not alter the nature of its relations with the Government of Kuwayt and will not establish a protectorate over the area ascribed to it. The Ottoman Imperial Government takes note of this declaration.

Article 5.
The autonomy of the Shaykh of Kuwayt is exercised by him in the territories the limit of which forms a semi-circle with the town of Kuwayt in the center, tge Khawr al-Zubayr at the northern extremity and al-Qurayyin at the southern extremity. This line is indicated in red on the map annexed to the present Convention (Annex V). The islands of al-Warbah, Bubyan, Mashjan, Faylakah, CAwahh, al-Kubr, Qaru, al-Maqta', and Umm-al-Maradim, together with the adjacent islets and waters, are included in this zone.

Article 6.
The tribes which are situated within the limits stipulated in the following Article are recognised as within the dependence of the Shaykh of Kuwayt, who will collect their tithes as in the past and will exercise the administrative rights belonging to him in his quality of Ottoman kaymakam. The Imperial Ottoman Government will not exercise in this region any administrative action independently of the Shaykh of Kuwayt and will refrain from establishing garrisons or undertaking any military action whatsoever without prior understanding with the Government of His Britannic Majesty.

Article 7.
The limits of the territory referred to in the preceding Article are fixed as follows:
The demarcation line begins on the coast at the mouth of Khawr al-Zubayr in the northwest and crosses immediately south of Umm-Qasr, Safwan, and Jabal Sanam, in such a wa as to leave to the vilayet of Basrah these locations and their wells; arriving at the al-Batin, it follows it toward the southwest until Hafr-al-Batin which it leaves on the same side as Kuwayt; from that point on the line in question goes southeast leaving to the wells of al-Safah, al-Garaa, al-Haba, al-Warbah, and Antaa, reaching the sea near Jabal Munifa. This line is marked in green on the map annexed to the present convention (Annex V).

Article 8.
In the event that the Ottoman Imperial Government agrees with the Government of His Britannic Majesty to prolong the Baghdad-Basrah railroad to the sea at the Kuwayt terminal or to any other terminal in the autonomous territory, the two Governments will agree on the measures to be taken concerning protection of the line and the stations as well as the establishment of customs offices, merchandise depots, and any other installations connected with the railroad.

Article 9.
The shaykh of Kuwayt will enjoy in full safety the rights of private property which he possesses in the territory of the vilayet of Basrah. These rights to private property will have to be exercised in accordance with Ottoman law, and the immovable properties will be subjected to duties and charges, to the rules of maintenance and transmission and to the jurisdiction established by Ottoman laws.

Article 10.
The criminals of neighbouring provinces will not be received in the territory of Kuwayt and will be expelled if found; similarly, the criminals of Kuwayt will not be received in neighbouring provinces and will be expelled if found.

It is understood that this provision will not be used by the Ottoman authorities as a pretext for interference in the affairs of Kuwayt; it will also not serve as a pretext to the shaykh of Kuwayt for interference in the affairs of the neighbouring provinces.

II. Al-Qatar

Article 11.
The Ottoman sancak of Najd, the northern limit of which is indicated by the demarcation line defined in Article 7 of this Convention, ends in the south at the gulf facing the island of al-Zakhnuniyah, which belongs to the said sancak. A line beginning at the extreme end of that gulf will separate the Najd from the peninsula of al-Qatar. The limits of Najd are indicated by a Blue Line on the map annexed to the present convention (Annex Va). The Ottoman Imperial Government having renounced all its claims to the peninsula of al-Qatar, it is understood by the two Governments that the peninsula will be governed as in the past by the Saykh Jasim bin Thani and his successors. The Government of His Britannic Majesty declares that it will not allow the interference of the Shaykh of Bahrayn in the internal affairs of al-Qatar, his endangering the autonomy of that area or his annexing it.

Article 12.
The inhabitants of Bahrayn will be allowed to visit the island of al-Zakhuniyah for fishing purposes and to reside there in full freedom during the winter, as in the past, without the application of any new tax.

III. Bahrayn

Article 13.
The Ottoman Imperial Government renounces all its claims to the islands of Bahrayn, including the two islets Lubaynat al-Aliya and Lubaynat al-Safliya, and recognises independence of the country. For its part, the Government of His Britannic Majesty declares that it has no intention of annexing the islands of Bahrayn to its territories.

Article 14.
The Government of His Britannic Majesty pledges itself vis-à-vis the Ottoman Imperial Government to assure that the Shaykh of Bahrayn does not charge Ottoman subjects fishing dues for pearl oysters exceeding the rate charged to the most favoured [of the] other interested parties.

Article 15.
The subjects of the Shaykh of Bahrayn will be considered foreigners in Ottoman territories and will be protected by his Britannic Majesty's Consuls. This protection, however, will have to be exercised in conformity with the general principles of European international law, the subjects of Bahrayn not enjoying privileges granted subjects of certain Powers by capitulations.

IV. The Persian Gulf

Article 16.
The Government of His Britannic Majesty having undertaken, for the protection of its special interests as well as for a higher purpose of humanity, marine police measures at all times in the free waters of the Persian Gulf and on the borders belonging to the independent Shaykhs and from the south of al-Qatar up to the Indian Ocean, the Ottoman Imperial Government is fully cognizant of the importance of these efforts already undertaken and declares that it will not be opposed to the Government of His Britannic Majesty exercising as in the present the following measures in the Persian Gulf:
(a) soundings, lighting of lighthouses, placement of buoys, piloting
(b) Maritime police

(c) quarantine measures

One this occasion, the Ottoman Imperial Government reserves all rights belonging to it as a territorial Power on the shores and in Ottoman territorial waters.

V. Commission for the Settlement of Boundaries

Article 17.

The two Governments agree to the establishment, in the shortest period of time, of a commission that shall apply to the territory the limits established by Articles 5, 7, and 190 of this Convention and shall draw up a detailed plan and explanatory report. The plan and the report, once drafted and duly signed by the respective commissioners, shall be considered an integral part of the present Convention.

Source: Hurewitz, *The Middle East and North Africa*, vol. 1, pp. 567-70, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 408-413.

British-Ottoman Convention on the Persian Gulf Area - 9 March 1914

His Majesty the King of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, on the one hand;

His Majesty the Emperor of the Ottomans, on the other hand;

Both desiring to complete and ratify the protocols (Annex A) signed by the British and Ottoman commissioners in 1903, 1904, and 1905 to indicate the line of demarcation of the frontier agreed on by them for the purpose of separating the vilayet of the Yemen from the nine districts of Aden such as is shown in blue on the four appended maps (Annex B);

Have named as their pleniplotentiaries:

His Majesty the King of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India: the Honorable Sir Edward Grey, Baronet of the United Kingdom, Knight of the Most Honorable Order of the Garter, Member of Parliament, Principal Secretary of State of His Majesty for Foreign Affairs;

His Majesty the Emperor of the Ottomans: His Higness Ibrahim Hakki Pasha, former Grand Vizier, decorated with the Grand Ribbons of the Imperial Order of Osmania and Majida in diamonds;

Who, having communicated their full powers, the which being found to be in good and due form, have agreed on that which follows:

Article I
The Sovereign Parties here contracting confirm and satisfy the protocols signed by the Ottoman and British Commissioners in 1903, 1904, and 1905, the texts of which are found at Annex A of the present convention.

Article II
In order to confirm the agreement made in the first paragraph of the protocol dated 20 April 1905, His Majesty the Emperor of the Ottomans declares that he will not alienate in any way that which belongs to the territory of an area about 550 square (English) miles contiguous to the line from Jabal Nouman to Husn Mourad and situated within the limits of the old district of Soubeha. The said territory is shown in yellow on the map which forms Annex C of the present convention.

Article III
Point No. 1 of Wadi Bana, shown on the first of the annexed maps (Annex B) of the present convention, being the last point on the eastern coast delimited over these places, it is agreed between the Sovereign Parties here contracting and agreeing, in conformity with the above-cited protocol and with due regard for conditions and specifications there contained, that the boundary of Ottoman territory shall follow a straight line extending from Lakmat al-Shuub north-eastwards to the desert of the Rub al-Khali at a 45° angle. This line shall rejoin the Rub al-Khali at parallel 20 degrees, the straight and direct line southwards which breaks off at a point on the southern coast of the Gulf of al-Uqair and which separates the Ottoman territory of the sanjak of the Najd from the territory of Qatar, in agreement with Article 11 of the Anglo-Turkish Convention of 29 July 1913, concerning the Persian Gulf and neighbouring territories.

The first of the two lines is shown in violet and the second blue on the special map annexed hereto (Annex C).

Article IV
The present Convention shall be ratified and the instruments of its ratification shall be exchanged at London as soon as possible, and with no greater delay than three months.

In pledge whereof, the respective plenipotentiaries have signed the present convention and affixed thereto their seals.

Made at London, with a double original, on 9 March 1914.

(L.S.) E. Gray
(L.S.) I. Hakki

Source: British Memorial, vol. II, Annex A #7, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 414-416.

Treaty between Ibn Saud and the Ottoman Government - 15 May 1914

Wali of the Vilayet of Basrah. Suleiman Shafik bin Ali Kumali.

Article 1
This Treaty is signed and executed between the Wali and the Commandant of Basrah, Suleiman Shafik Pasha, who is specially empowered by Imperial Iradeh, and H.E. Abdul Aziz Pasha Al-Saood, Wali and Commandant of Najd:

This Treaty is relied on the by the Imperial Government and consisted of 12 articles, explaining secret matters mentioned in the Imperial Firman dated ...

With reference to the Vilayet of Najd. The text of this Treaty shall be secret, and relied upon.

Article 2
The Vilayet of Najd is to remain in charge of Abdul Aziz Pasha Al-Saood so long as he is alive, according to the Imperial Firman.

After him it will go to his sons and grandsons by Imperial Firman, provided that he shall be loyal to the Imperial Government and to his forefathers, the previous Valis.

Article 3
A Technical Military Official shall be appointed by the said Wali and Commandant (i.e. Bin Saud) to live wherever he wishes: if he sees fit and necessary he may introduce Turkish officers for the fundamental technical training of Local Troops, and their number shall depend upon the choice and wishes of the said Wali and Commandant (i.e. Bin Saud).

Article 4
A number of solidiers and gendarmerie, as deemed fit by the Wali and Commandant aforesaid, shall be stationed at seaports such as Katif, and Ojair, &c.

Article 5
All the business of the Customs, Taxes, Ports and Light houses shall be exercised subject to the international rights of Governments, and shall be conducted according to the principles of the Turkish Government under the direction of the said Wali and Commandant.

Article 6
Till the sources of the revenues reach a degree sufficient to meet the requirements of the Vilayet and the local expenditure and military dispositions according to the present circumstances and normal conditions of Najd, the deficiency in the budget shall be met from the Customs, Posts, Telegraphs and Ports revenue; and if there is a surplus, it should be sent to the Porte with a report.

If the local revenue is sufficient to meet all expenses, the income of the Posts, Telegraphs and customs shall be remitted to their respective Departments. Also as regards local incomes other than those mentioned above, if there is any surplus, 10 per cent of it shall be sent to the Government Treasury.

Article 7
The Turkish flag shall be hoisted on all Government buildings and places of importance on the sea and on the land, and also on boats belonging to the Vilayet of Najd.

Article 8
Correspondence shall be conducted with the Marine Department for the regular supply of arms and ammunition.

Article 9
The said Wali and Commandant is not allowed to interfere with, or correspond about foreign affairs and international treaties, or to grant concessions to foreigners.

Article 10
All the correspondence of the Wali and Commandant shall be direct with the Imperial Ministeries of Interior and Marine, without intermediary.

Article 11
Post Offices shall be established in the Vilayet of Najd, in order to facilitate communication; and arrangements shall be made to despatch posts to the necessary places in a fitting manner; Turkish stamps shall be affixed to all letters and packages.

Article 12
If, God forbid, the Government should have to fight with a foreign power or if there should be any internal disturbance in any Wilayet and the Government asks the said Wali for a force to co-operate with its own forces it is incumbent of the Wali to prepare a sufficient force with provisions and ammunition, and to respond to the demand at once, according to his power and ability.

Signed. Abdul Aziz,
Wali of Najd Wilayet, and Commander of its Army.

Signed. Suleimand Shafik Bin Ali Kamali.
Wali of Basrah Wilayet, and Commander of its Forces.

Translation of Treaty between Ibn Saud and the Turks, Dated 4th Rajab 1332—15th May 1914. Original found among Turkish records at Basrah.

Source: British Memorial, vol. II, Annex A #8, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 417-419.

British Treaty with the Idrisi Saiyid of Sabya - 30 April 1915

1. This Treaty of Friendship and Goodwill is signed by Major-General D. G. L. Shaw, the Political Resident, Aden, on behalf of the British Government, and Sayed Mustafa bun Sayed Abdul Ali on the part of His Eminence Saiyid Muhammad bin Ali bin Muhammad bin Ahmed bin Idris, the Idrisi Saiyid and Amir of Sabia and its environments.

2. Its main objects are to war against the Turks and to consilodate a pact of friendship between the British Government and the Idrisi Saiyid, abovementioned and his Tribesmen.

3. The Idrisi Saiyid agrees to attack and to endeavour to drive the Turks from their stations in the Yemen and to the best of his powers to harass the Turkish troops in the direction of the Yemen, and to extend his territories at the expense of the Turks.

4. The Saiyid's prime objective will be against the Turks only, and he will abstain from any hostile or provocative action against Imam Yahya so long as the latter does not join hands with the Turks.

5. The British Government undertakes to safeguard the Idrisi Saiyid's territories from all attack on the seaboard from any enemy who may molest him; to guarantee his independence in his own domain and at the conclusion of the war to use every diplomatic means in its power to adjudicate between the rival claims of the Idrisi Saiyid and the Imam Yahya or any other rival.

6. The British Government has no desire to enlarge its borders in Western Arabia, but wishes solely to see the various Arab rulers living peacefully and amicably together each in his own sphere, and all in friendship with the British Government.

7. As a mark of its appreciation of the work to be performed by the Idrisi Saiyid, the British Government has aided him with both funds and munitions and will continue to assist him in the prosecution of the war so long as it lasts in accordance with the measures of the Idrisi's activities.

8. Finally, whilst maintaining a strict blockade on all Turkish ports in the Red Sea, the British Government has for some months past been giving the Idrisi Saiyid full and free scope to trade and traffic between his ports and Aden, and this concession the British Government in token of friendship existing will continue uninterruptedly to maintain.

9. This Treaty will be held to be valid after its ratification by the Government of India.

Source: Leatherdale, *Britain and Saudi Arabia*, 1925-1939 (1983) Frank Cass and Company Ltd, London, p. 371.

Treaty between Abdul Aziz Ibn Saud and the United Kingdom - 16 December 1915

In the name of God the Merciful and Compassionate.

Preamble
The High British Government on its own part, and Abdul Aziz-bin-Abdur Rahman-bin-Faisal as-Saud, Ruler of Najd, El Hassa, Qatif and Jubail, and the towns and ports belonging to them, on behalf of himself, his heirs and successors and tribesmen, being desirous of confirming and strengthening the friendly relations which have for a long time existed between the two parties, and with a view to consolidating their respective interests – the British Government have named and appointed Lieutenant-Colonel Sir Percy Cox, K.C.I.E., C.S.I., British Resident in the Persian Gulf, as their Plenipotentiary, to conclude a treaty for this purpose with Abdul Aziz-bin-Abdur Rahman-bin-Faisal as-Saud.

The said Lieutenant-Colonel Sir Percy Cox, and Abdul Aziz-bin-Abdur Rahman-bin-Faisal as-Saud, hereafter known as "Bin Saud", have agreed upon the concluded the following articles:--

Article I
The British Government do acknowledge and admit that Najd, Al Hasa, Qatif and Jubail, and their dependencies and territories, which will be discussed and determined hereafter, and their territories and ports on the shores of the Persian Gulf are the countries of Bin Saud and of his fathers before him and do hereby recognise the said Bin Saud as the independent ruler thereof and absolute Chief of their tribes, and after him his sons and descendants by inheritance, but the selection of the individual shall be in accordance with the designation of his successor (by the living Ruler) or by the calling for the votes of the subjects inhabiting those countries.

Article II
In the event of aggression by any Foreign Power on the territories of the countries belonging to said Bin Saud, and his descendants, the British Government will aid Bin Saud in all circumstances and in any place.

Article III
Bin Saud hereby agrees and promises to refrain from entering into any correspondence, agreement or Treaty with any Foreign Nation or Power and further to give immediate notice to the political authorities of the British Government of any attempt on the part of any other Power to interfere with the above territories.

Article IV
Bin Saud hereby undertakes that he will not cede, mortgage, or otherwise dispose of the above territories or any part of them, or (grant) concessions within those territories to a Foreign Power or to the subjects of any Foreign Power without the consent of the British Government, whose advice he will unreservedly follow, where his interests require it.

Article V
Bin Saud hereby undertakes to keep open the roads leading through his countries to the Holy Shrines and to protect pilgrims on their return to the Holy Places.

Article VI
Bin Saud undertakes as his fathers did before him to refrain from all aggression on or interference with the territories of Kuwait, Bahrain, and of the Shaikhs of Qatar and the Oman Coast, who are under the protection of the exalted Government and have Treaty relations and the limits of their territories shall be hereafter determined.

Article VII
The British Government and Bin Saud agree to conclude a further detailed Treaty in regard to matters jointly concerning the two parties.

(Signed) Abdul Aziz-bin-Abdur Rahman-bin-Faisal as-Saud.
(Seal of Abdul Aziz-bin-Abdur Rahman-bin-Faisal as-Saud.)

Source: Troeller, *The Birth of Saudi Arabia*, pp. 250-3, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 423-425.

Treaty between Abdul Aziz Ibn Saud and the United Kingdom - 26 December 1915

In the name of God the Merciful and Compassionate.

Preamble
The High British Government on its own part, and Abdul Aziz bin Abdur Rahman bin Faisal Al-Saud, Ruler of Najd, El Hassa, Qatif and Jubail, and the towns and ports belonging to them, on behalf of himself, his heirs and successors, and tribesmen being desirous of confirming and strengthening the friendly relations which have for a long time existed between the two parties, and with a view to consolidating their respective interests – the British Government have named and appointed Lieutenant-Colonel Sir Percy Cox, K.C.S.I., K.C.I.E., British Resident in the Persian Gulf, as their Plenipotentiary, to conclude a treaty for this purpose with Abdul Aziz bin Abdur Rahman bin Faisal Al-Saud.

The said Lieutenant-Colonel Sir Percy Cox and Abdul Aziz bin Abdur Rahman bin Faisal Al-Saud, hereafter known as "Bin Saud" have agreed upon and concluded the following articles:--

Article I
The British Government do acknowledge and admit that Najd, Al Hasa, Qatif and Jubail, and their dependencies and territories, which will be discussed and determined hereafter, and their ports on the shores of the Persian Gulf are the countries of Bin Saud and of his fathers before him, and do hereby recognise the said Bin Saud as the independent ruler thereof and absolute Chief of their tribes, and after him his sons and descendants by inheritance; but the selection of the individual shall be in accordance with the nomination (i.e. by the living Ruler) of his successor; but with the proviso that he shall not be a person antagonistic to the British Government in any respect; such as, for example, in regard to the terms mentioned in the Treaty.

Article II
In the event of aggression by any Foreign Power on the territories of the countries of said Bin Saud and his descendants, without reference to the British Government and without giving her an opportunity of communicating with Bin Saud and composing the matter, the British Government will aid Bin Saud to such extent and in such a manner as the British Government after consulting Bin Saud may consider most effective for protecting his interests and countries.

Article III
Bin Saud hereby agrees and promises to refrain from entering into any correspondence, agreement, or treaty, with any Foreign Nation or Power, and further to give immediate notice to the political authorities of the British Government of any attempt on the part of any other Power to interfere with the above territories.

Article IV
Bin Saud hereby undertakes that he will absolutely not cede, sell, mortgage, lease, or otherwise dispose of the above territories or any part of them, or grant concessions within those territories to any Foreign Power, without the consent of the British Government.

And that he will follow her advice unreservedly provided that it be not damaging to his own interests.

Article V
Bin Saud hereby undertakes to keep open within his territories, the roads leading to the Holy Places and to protect pilgrims on their passage to and from the Holy Places.

Article VI
Bin Saud undertakes, as his fathers did before him, to refrain from all aggression on, or interference with the territories of Kuwait, Bahrain, and of the Shaikhs of Qatar and the Oman Coast, who are under the protection of the British Government, and who have treaty relations with said Government; and the limits of their territories shall be hereafter determined.

Article VII
The British Government and Bin Saud agree to conclude a further detailed treaty in regard to matter concerning the two parties.

Dated 18th Safar 1334 corresponding to 26th December, 1925.

P.Z. Cox, Lt. Col.
Political Resident in the Persian Gulf.

Chelmsford
Viceroy and Governor General of India.

This treaty was ratified by the Viceroy and Governor General of India in Council at Simla on the 18th day of July A.D. one thousand nine hundred and sixteen.

A.H. Grant.
Secretary to the Government of India.
Foreign and Political Department.

Source: Aithchison, *A Collection of Treaties XI*, pp. 206-8, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 420-422.

British Treaty with the Shaykh of Qatar - 3 November 1916

Article I.
I, Shikh cAbdullah bin Jasim bin Thani, undertake that I will, as do the friendly Arab Sheikhs of Abu Dhabi, Dibai, Shargah, Ajman, Ras-ul-Khaima and Unmal-Qawain, co-operate with the High British Government in the suppression of the slave trade and piracy generally in the maintenance of the Maritime Peace.

To this end, Lieutenant-Colonel Sir Percy Cox, Political Resident in the Persian Gulf, has favoured me with the Treaties and Engagements, entered into between the Shaikhs abovementioned and the High British Government, and I hereby declare that I will abide by the spirit and obligations of the aforesaid Treaties and Engagements.

Article II.
On the other hand, the British Government undertakes that I and my subjects and me and their vessels shall receive all the immunities, privileges an advantages that are conferred on the friendly Shaikhs, their subjects and their vessels. In token whereof, Sir Percy Cox has affixed his signature with the date thereof to each and every one of the aforesaid Treaties and Engagements in the copy granted to me and I have also affixed my signature and seal with the dates thereof to each and every one of the aforesaid Treaties and Engagements, in two other printed copies of the same Treaties and Engagements, that it mat not be hidden.

Article III.
And in particular, I, Shaikh Abdullah, have further published a proclamation forbidding the import and sale of arms into my territories and port of Qatar; and in consideration of the undertaking into which I now enter, the British Government on its part agreement to grant me facilities to purchase and import, from the Muscat Arms Warehouse or such other place as the British Government may approve, for my personal use, and for the arming of my dependents, such arms and ammunition as I may reasonably need and apply for in such fashion as may be arranged hereafter through Political Agent, Bahrein. I undertake absolutely that arms and ammunition thus supplied to me shall under no circumstances be re-exported from my territories or sold to the public, but shall be reserved solely for supplying the needs of my tribesmen and dependents whom I have to arm for maintenance of order in my territories and the protection of my Frontiers. In my opinion the amount of my yearly requirements will be up to five hundred weapons.

Article IV.
I, Shaikh cAbdullah, further undertake that I will not have relations nor correspond with, nor receive the agent of, any other Power without the consent of the High British Government; neither will I without such consent, cede to any other Power or its subjects, land either on lease, sale, transfer, gift, or in any other way whatsoever.

Article V.

I also declare that, without the consent of the High British Government, I will not grant pearl-fishery concessions, or any other monopolies, concessions, or cable landing rights, to anyone whomsoever.

Article VI.
The Customs dues on the goods of British merchants imported to Qatar shall not exceed those levied from my own subjects on their goods and shall in no case exceed five per cent. ad valorem. British goods shall be liable to the payment of no other dues or taxes of any other kind whatsoever, beyond that already specified.

Article VII.
I, Shaikh cAbdullah, further, in particular, undertake to allow British subjects to reside in Qatar for trade and to protect their lives and property.

Article VIII.
I also undertake to receive, should the British Government deem it advisable, an Agent from the British Government, who shall remain at Al Bidaa for the transaction of such business as the British Government may have with me and to watch over the interests of British traders residing at my ports or visiting them upon their lawful occasions.

Article IX.
Further, I undertake to allow the establishment of a British Post Office and a Telegraph installation anywhere in my territory whenever the British Government should hereafter desire them. I also undertake to protect them when established.

Article X.
On their part, the High British Government, in consideration of these Treaties and Engagements that I have entered into with them, undertake to protect me and my subjects and territory from all aggression by sea and to do their utmost to exact reparation for all injuries that I, or my subjects, may suffer when proceeding to sea upon lawful occasions.

Article XI.
They also undertake to grant me good offices, should I or my subjects be assailed by land within the territories or Qatar. It is, however, thoroughly understood that this obligation rests upon the British Government only in the event of such aggression whether by land or sea, being unprovoked by any act or aggression on the part of myself or my subjects against others.

Ratified by the Viceroy of India, Delhi, 28 March 1918.

Source: Hurewitz, *The Middle East and North Africa*, vol. 1, pp. 75-76, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 426-428.

Protectorate Agreement: `Asir, Hejaz, Nejd and Dependencies - 21 October 1926

(Promulgated 7 January 1927)

Praise be to God alone!
Between the King of the Hejaz, Sultan of Nejd and its dependencies: and the Imam Sayyid al-Hassan ibn Ali al-Idrisi. Desiring a complete understanding and with a view to the preservation of the existence of the Arab countries, and to the strengthening of ties between the Princes of the Arab peninsula, the following agreement has been reached between His Majesty the King of the Hejaz, Sultan of Nejd and its dependencies, Abdul-Aziz ibn Abdul-Rahman Al Faisal Al Saud and His Lordship the Imam of Asir, Sayyid al-Hassan ibn Ali al-Idrisi:-

Article 1.
His Lordship the Imam Sayyid al-Hassan ibn Ali al-Idrisi acknowledges the ancient marches described in the treaty of the 10th Safar, 1339, made between the Sultan of Nejd and the Imam Sayyid Mohammad ibn Ali al-Idrisi, and which were at the date subject to the House of Idrisi, as being in virtue of this agreement under the suzerainty of His Majesty the King of the Hejaz, Sultan of Nejd and its dependencies.

Article 2.
The Imam of Asir may not enter into political negotiations with any Government of grant any economic concession to any person expect with the sanction of His Majesty the King of the Hejaz, Sultan of Nejd and its dependencies.

Article 3.
The Imam of Asir may not declare war or make peace except with the sanction of His Majesty the King of the Hejaz, Sultan of Nejd and its dependencies.

Article 4.
The Imam of Asir may not cede any part of the territories of Asir described in Article 1.

Article 5.
The King of the Hejaz, Sultan of Nejd and its dependencies, recognises the rulership of the present Imam of Asir, during his lifetime, of the territories defined in Article , and thereafter (extends the same recognition) to whomsoever the House of Idrisi and the competent authorities of the Imamate may agree upon.

Article 6.
The King of the Hejaz, Sultan of Nejd and its dependencies, agrees that the internal administration of Asir, the supervision of its tribal affairs, appointments and dismissals, for example, pertain to the rights of the Imam of Asir, provided such administration is in harmony with Sharia law and justice according to the practice of both Governments.

Article 7.
The King of the Hejaz, Sultan of Nejd and its dependencies, undertakes to repel all internal and external aggression which may befall the territories of the Asir as defined in Article 1 and this by agreement between the two contracting parties according to the circumstances and exigencies of interest.

Article 8.
Both parties agree to adhere to this agreement and to carry out its obligations.

Article 9.
This agreement will be effective after confirmation by the two high contracting parties.

Article 10.
This agreement has been drawn up in Arabic in two copies, of which one will be preserved by each of the two contracting parties.

Article 11.
This agreement will be known as "the Mecca Agreement".

Source: Leatherdale, *Britain and Saudi Arabia*, 1925-1939 (1983) Frank Cass and Company Ltd, London, pp. 378-379.

Treaty between the United Kingdom and the King of Hijaz and Najd - 20 May 1927

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, on the one part; and

His Majesty the King of the Hejaz and of Najd and its Dependencies, on the other part;

Being desirous of confirming and strengthening the friendly relations which exist between them and of consolidating their respective interests, have resolved to conclude a treaty of friendship and good understanding, for which purpose His Britannic Majesty has appointed as his Plenipotentiary Sir Gilbert Falkingham Clayton, and his Majesty the King of the Hejaz and of Nejd and its Dependencies has appointed His Royal Highness the Amir Faisal ibn Abdul-Aziz, his son and Viceroy in the Hejaz, as his Plenipotentiary.

His Highness the Amir Faisal ibn Abdul-Aziz and Sir Gilbert Falkingham Clayton, having examined their credentials and found them to be in good and due form, have accordingly agreed upon and concluded the following articles:-

Article I.
His Britannic Majesty recognises the complete and absolute independence of the dominions of his Majesty the King of Hejaz and of Nejd and its Dependencies.

Article II.
There shall be peace and friendship between His Britannic Majesty and His Majesty the King of Hejaz and of Nejd and its Dependencies. Each of the High Contracting Parties undertakes to maintain good relations with the other and to endeavour by all the means at his disposal to prevent his territories being used as a base for unlawful activities directed against the peace and tranquillity in the territories of the other party.

Article III.
His Majesty King of Hejaz and of Nejd and its Dependencies undertakes that the performance of the pilgrimage will be facilitated to British subjects and British-protected persons of the Moslem faith to the same extent as to other pilgrims, and announces that they will be safe as regards their property and their person during their stay in the Hejaz.

Article IV.
His Majesty King of Hejaz and of Nejd and its Dependencies undertakes that the property of the aforesaid pilgrims who may dies within the territories of His Majesty and who have no lawful trustee in those territories shall be handed over to the British Agent in Jedda or to such authority as he may appoint for the purpose, to be forwarded by him to the rightful heirs of the decreased pilgrim; provided that the property shall not be handed over to the British representative until the formalities of the competent tribunals have been complied with and the dues prescribed under Hajazi or Nejd laws have been duly collected.

Article V.
His Britannic Majesty recognises the national (Hejazi or Nejdi) status of all subjects of His Majesty the King of Hejaz and of Nejd and its Dependencies who may at any time be within the territories of His Britannic Majesty or territories under the protection of His Britannic Majesty.

Similarly, His Majesty the King of Hejaz and of Nejd and its Dependencies recognises the national (British) status of all subjects of His Britannic Majesty and of all persons enjoying the protection of His Britannic Majesty who may at any time be within the territories of His Majesty the King of Hejaz and of Nejd and its Dependencies; it being understood that the principles of international law in force between independent governments shall be respected.

Article VI.
His Majesty the King of Hejaz and of Nejd and its Dependencies undertakes to maintain friendly and peaceful relations with the territories of Kuwait and Bahrain, and with the Shaikhs of Qatar and the Oman Coast, who are in special treaty relations with His Britannic Majesty's Government.

Article VII.
His Majesty the King of Hejaz and of Nejd and its Dependencies undertakes to cooperate by all the means at this disposal with His Britannic Majesty in the suppression of the slave trade.

Article VIII.
The present treaty shall be ratified by each of the High Contracting Parties and the ratifications exchanged as soon as possible. It shall come into force on the day of the exchange of ratifications and shall be binding during seven years from that date. In case neither of the High Contracting Parties shall have given notice to the other six months before the expiration of the said period of seven years of his intention to terminate the treaty it shall remain in force and shall not be held to have terminated until the expiration of sic months from the date on which either of the Parties shall have given notice of termination to the other Party.

Article IX.
The treaty concluded between His Britannic Majesty and His Majesty the King of Hejaz and of Nejd and its Dependencies (then Ruler of Nejd and its then Dependencies) on the 26th December 1915 shall cease to have effect as from the date on which the present treaty is ratified.

Article X.
The present treaty has been drawn up in English and Arabic. Both texts shall be of equal validity, but in cases of divergence in the interpretation of any part of the treaty the English text shall prevail.

Article XI.
The present treaty shall be known as the Treaty of Jedda.

Signed at Jedda on Friday the 20th May 1927 (Corresponding to the 18th Zul-Qa-da 1345).

Gilbert Falkingham Clayton and Faisal 'Abdul 'Aziz al Saud.

Source: Hurewitz, *The Middle East and North Africa*, vol. 2, pp. 383-85, reproduced in Al-Shamian, *The Evolution of National Boundaries in the Southeastern Arabian Peninsula: 1934-1955* (1987) The University of Michigan, pp. 431-434.

Agreement between the King of Saudi Arabia and the Imam of northern Yemen

According to the command of His Majesty the Greatest Imam Yahya bin Mohammed Hamid-Al-Deen and His Majesty Great King Abdul-Aziz bin Abdul-Rahman Al-Faisal Al-Saud, we have met on behalf of the two Kings in order to conclude an agreement between the two Governments which is enshrined as follows:

Article 1) Each of the two states is obliged to maintain friendship and good relations, to promote fraternal ties and not to cause harm to the lands of the other.

Article 2) Each of the two states is obliged to extradite political and non-political criminals, following the conclusion of this Agreement, when the other state has demanded such extradition.

Article 3) Each of the two states is obliged to grant the citizens of the other state all rights in accordance with Shari`ah (Islamic law).

Article 4) Each of the two states is obliged on the apprehension and extradition of citizens of the other state to have regard to all Shari`ah's rights; in case of a problem, which is not able to be solved by government officials or wardens, it is to be referred to the King and the Imam.

Article 5) Each of the two states shall not allow the entry or exit from that state's territory of persons who are escaping the jurisdiction of the other state. Regardless of the status or employment of the person, the state shall return such persons immediately.

Article 6) In case a crime is committed by a citizen of one of the two states, he shall be tried before the courts of the state where the crime was committed.

Article 7) Governors and wardens are prohibited from dealing with citizens in a way which causes anxiety and produces misunderstanding between the two states.

Article 8) A citizen of one of the two states who resides in the territory of the other state shall be taken immediately to his Government if his government asks for him.

This Agreement has been reached between the envoys on behalf of His Eminence the Imam and the envoys of His Majesty King Abdul-Aziz bin Abdul-Rahman Al-Faisal Al-Saud on the condition that the enforcement of these eight Articles shall be ratified and accepted by the two great Kings; what has above mentioned is drafted in two copies; each party has one copy dated on Thursday the fifth of Sha`ban (month 8) in the year of 1350 AH.

Source: *The Green Book* (In Arabic) (1934); translation by the author.

Treaty of Friendship And Mutual Cooperation: Britain And Yemen - 1 February 1934

Article 1.
His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, acknowledges the complete and absolute independence of His Majesty the King of Yemen, the Imam, and his kingdom in all affairs of whatsoever kind.

Article 2.
There shall always be peace and friendship between the high contracting parties, who undertake to maintain good relations with each other in every respect.

Article 3.
The settlement of the question of the southern frontier of the Yemen is deferred pending the conclusion, in whatever way may be agreed upon by both high contracting parties in a spirit of friendship and complete concord, free from any dispute or difference, of the negotiations which shall take place between them before the expiry of the period of the present treaty.
Pending the conclusion of the negotiations referred to in the preceding paragraph, the high contracting parties agree to maintain the situation existing in regard to the frontier on the date of the signature of this treaty, and both high contracting parties undertake that they will prevent, by all means at their disposal, any violation by their forces of the above-mentioned frontier, and any interference by their subjects, or from their side of the frontier, with the affairs of the people inhabiting the other side of the said frontier.

Article 4.
After the coming into force of the present treaty, the high contracting parties shall, by mutual agreement and concord enter into such agreements as shall be necessary for the regulation of commercial and economic affairs, based on the principles of general international practice.

Article 5.

(1) The subjects of each of the high contracting parties who wish to trade in the territories of the other shall be amenable to the local laws and decrees, and shall receive equal treatment to that enjoyed by the subjects of the most favoured Power.
(2) Similarly, the vessels of each of the high contracting parties and their cargoes shall receive, in the ports of the territories of the other, treatment equal to that accorded to the vessels and their cargoes of the most favoured Power, and the passengers in such vessels shall be treated in the ports of the territories of the other party in the same manner as those in the vessels of the most favoured Power therein.
(3) For the purposes of this article in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:
    (a) The word "territories" shall be deemed to mean Great Britain and Northern Ireland, India, and all His Majesty's Colonies, protectorates and all mandated territories in respect of which the mandate is exercised by His Majesty's Government in the United Kingdom.

(b) The word "subjects" shall be deemed to mean all subjects of His Majesty wherever domiciled, all the inhabitants of countries protection, and, similarly, all companies incorporated in any of His Majesty's territories shall be deemed to be subjects of His Majesty.
(c) The word "vessels" shall be deemed to mean all merchant vessels registered in any part of the British Commonwealth of Nations.

Article 6.
This treaty shall be the basis of all subsequent agreements that may be concluded between the high contracting parties now and in the future for the purposes of friendship and amity. The high contracting parties undertake not to assist not to connive at any action directed against the friendship and concord now sincerely existing between them.

Article 7.
The present treaty shall be ratified as soon as possible after the signature, and the instrument of ratification shall be exchanged at Sana. It shall come into force on the date of the exchange of ratifications, and shall thereafter remain in force for a period of forty years.

Source: Leatherdale, *Britain and Saudi Arabia, 1925-1939* (1983) Frank Cass and Company Ltd, London, pp. 382-383.

Treaty of Taif - 20 May 1934

In the Name of God the Merciful, the Compassionate. His Honourable Majesty the Imam Abdul Aziz Abdurrahman-al-Feysal al-Saud, King of the Saudi Arabian Kingdom on the one part, and His Honourable Majesty the Imam Yahya-bin-Muhammad Hamiduddin, King of the Yemen, on the other part.

Being desirous of ending the state of war unfortunately existing between them and their Governments and peoples;

And of uniting the Islamic Arab nation and raising its condition and maintaining its prestige and independence,

And in view of the necessity of establishing firm treaty relations between them and their Governments and countries on a basis of mutual advantage and reciprocal interests;
And wishing to fix the frontiers between their countries and to establish relations of good neighbourship and ties of Islamic friendship between them and to strengthen the foundations of peace and tranquillity between their peoples and countries; And being desirous that there should be a united front against sudden mishaps and a solid structure to preserve the safety of the Arabian peninsula:

Have resolved to conclude a treaty of Islamic friendship and Arab brotherhood between them and for that purpose have nominated the following representatives plenipotentiaries on their behalf.

[Here follow the names.]

Their Majesties the two Kings have accorded to their above-mentioned representatives full powers and absolute authority; and their above-mentioned representatives, having perused each other's credentials and found them in proper form, have, in the name of their Kings, agreed upon the following articles:

Article 1: The state of war existing between the Kingdom of the Yemen and the Kingdom of Saudi Arabia shall be terminated as from the moment of signature of this treaty, and there shall forthwith be established between Their Majesties the Kings and their countries and peoples a state of perpetual peace, firm friendship and everlasting Islamic Arab brotherhood, inviolable in part or whole. The two high contracting parties undertake to settle in a spirit of affection and friendship all disputes and differences which may arise between them, and to ensure that a spirit of Islamic Arab brotherhood shall dominate their relations in all states and conditions. They call God to witness the goodness of their intentions and their true desire for concord and agreement, both secretly and openly, and they pray the Almighty to grant them and their successors and heirs and Governments success in the continuance of this proper attitude, which is pleasing to the Creator and honourable to their race and religion.
Article 2: Each of the two high contracting parties recognises the full and absolute independence of the Kingdom of the other party and his sovereignty over it. His Majesty the

Imam Abdul Aziz-bin Abdurrahman-al-Feysal-al-Saud, King of the Saudi Arabian Kingdom, acknowledges to His Majesty the Imam Yahya and his lawful descendants the full and absolute independence of the Kingdom of the Yemen and his sovereignty over it, and His Majesty the Imam Yahya-bin-Muhammad Hamiduddin, King of the Yemen, acknowledges to His Majesty the Imam Abdul Aziz and his lawful descendants the full and absolute independence of the Saudi Arabian Kingdom and his sovereignty over it. Each of them gives up any right he claimed over the any part or parts of the country of the other party beyond the frontiers fixed and defined in the text of this treaty. His Majesty the Imam King Abdul Aziz abandons by this treaty any right of protection or occupation, or any other right, which he claimed in the country which, according to this treaty, belongs to the Yemen and which was (formerly) in the possession of the Idrisis and others. His Majesty the Imam Yahya similarly abandons by this treaty any right he claimed in the name of Yemeni unity or otherwise, in the country (formerly) in the possession of the Idrisis or the Al-Aidh, or in Najran, or in the Yam country, which according to this treaty belongs to the Saudi Arabian Kingdom.

Article 3: The two high contracting parties agree to conduct their relations and communications in such a manner as will secure the interests of both parties and will cause no harm to either of them, provided that neither of the high contracting parties shall concede to the other party less than he concedes to a third party. Neither of the two parties shall be bound to concede to the other party more than he receives in return.

Article 4: The frontier line which divides the countries of the two high contracting parties is explained in sufficient detail hereunder. This line is considered as a fixed dividing boundary between the territories subject to each.

The frontier line between the two Kingdoms begins at a point half way between Midi and Al Muim on the coast of the Red Sea, and (runs) up to the mountains of the Tihama in an easterly direction. It then turns northwards until it ends on the north-west boundary between the Beni Jama'a and (the tribes) adjacent to them on the north and west. It then bends east until it ends at a point between the limits of the Naqa'a and Wa'ar, which belong to the Waila tribe, and the limits of the Yam. It then bends until it reaches the pass of Marwan and Aqaba Rifada. It then bends eastwards until it ends, on the east, on the edge of the boundary between those of the Hamdan-bin-Zaid, Waila, etc, who are outside Yam, and Yarm. Everything which runs on the right-hand side of the above-mentioned line, which runs from the point mentioned on the sea shore up to the end of the borders on all sides of the mountains mentioned, shall belong to Yemen, and everything to the left of the above-mentioned line shall belong to the Saudi Arabian Kingdom. On the Yemen side are Medi, Haradh, part of the Harth tribe, Mir, the Dhahir Mountains, Shada, Dhay'a, part of the Abadil, all the country and the mountains of Razih, Manbah, with Arwa-al-Amshaykk, all the country and the mountains of Beni Jama'a, Sahar-ash-Sham, Yabad and its neighbourhood, the Maraisagha area of the Sahar-ash-Sham, the whole of Sahar, Naqa'a, Wa'ar, the whole of Waila, and also Far with Aqabat Nahuqa, the whole of Hamdan-bin-Zaid, which is outside Yamand Wad'a Dhahran. These mentioned, and their territories within their known limits, and all between the said directions and their vicinities, the names of which are not mentioned and whichwere actually subject to or under the control of the Yemeni Kingdom before the year 1352, are on the Yemeni side and belong to the Yemen. On the left-hand side are Muim, Wa'lan, most of the Harth, the Khuba, the Jabri, most of the Abadil, all Faifa, Beni Malik, Beni Haris, the Al Talid, Qahtan, Dhahran, Wadi'a, all the Wadi'a Dhahran, together with the pass of Marwan, and Aqaba Rifida, and the area lying beyond on the east and north of Yam and Najran, Hadhim, Zur Wada, all the Waila in Najran, and all below the Aqaba Nuhuqa, up to the edges of Najran and Yam on the east, all these, and their territories within known limits, and all between the named directions and

their vicinities which have not been mentioned by name, and which were actually subject to or under the control of the Saudi Arabian Kingdom before the year 1352, are on the left-hand side of the said line and belong to the Saudi Arabian Kingdom. Everything mentioned regarding Yam, Najran, Hadan, Zur Wad'a, and all the Waila in Najran, is in accordance with the decision (tahkim) of His Majesty the Imam Yahya to His Majesty King Abdul Aziz as regards Yam, and the judgement (hukm) of His Majesty King Abdul Aziz that all of it should belong to the Saudi Arabian Kingdom; and while the Hadan and Zur Wad'a and the Waila in Najran belong to Waila, and, except in so far as has been mentioned, do not come within the Saudi Arabian Kingdom, this shall not prevent them or their brothers of Waila from enjoying mutual relations and intercourse and the usual and customary co-operation. This line then extends from the end of the above-mentioned limits between the edges of the Saudi Arabian tribes and of those of the Hamdam-bin-Zaid, and all the Yemeni tribes who are outside Yam. All the borders and the Yemeni territories up to the end of the Yemeni frontier in all directions belong to the Yemeni Kingdom; and all the borders and territories up to the end of their boundaries, in all directions, belong to the Saudi Arabian Kingdom. All points mentioned in this article, whether north, south, east or west, are to be considered in accordance with the general trend of the frontier line in the directions indicated; often obstacles cause it to bend into the country of one or other Kingdom. As regards the determination and fixing of the said line, the separating out of the tribes and the settlement of their diras in the best manner, these shall be effected by a committee formed of an equal number of persons from the two parties, in a friendly and brotherly way and without prejudice, according to tribal usage and custom.

Article 5: In view of the desire of both high contracting parties for the continuance of peace and tranquillity, and for the non-existence of anything which might disturb the thoughts of these two countries, they may mutually undertake not to construct any fortified building within a distance of 5 kilometres on either side of the frontier, anywhere along the frontier line.

Article 6: The two high contracting parties undertake immediately to withdraw their troops from the country which, by virtue of this treaty, becomes the property of the other party, and to safeguard the inhabitants and troops.

Article 7: The two high contracting parties undertake to prevent their people from committing any harmful or hostile act against the people of the other Kingdom, in any district or any route ; to prevent raiding between the Bedouin on both sides; to return all property which is established by legal investigation, after the ratification of this treaty, as having been taken; to give compensation for all damage, according as may be legally necessary, where crimes of murder or wounding have been committed; and severely to punish anyone proved to have committed any hostile act. This article shall continue operative until another agreement shall have been drawn up between the two parties as to the manner of investigating and estimating damage and loss.

Article 8: The two high contracting parties mutually undertake to refrain from resorting to force in all difficulties between them, and to do their utmost to settle any disputes which may arise between them, whether caused by this treaty or the interpretation of all or any of its articles or resulting from any other cause, by friendly representations; in the event of inability to agree by this means, each of the two parties undertakes to resort to arbitration, of which the conditions, the manner of demand, and the conduct are explained in the appendix attached to this treaty. This appendix shall have the force and authority of this treaty, and shall be considered an integral part of it.

Article 9: The two high contracting parties undertake, by all moral and material means at their command, to prevent the use of their territory as a base and centre for any hostile action or enterprise, or preparations therefor, against the country of the other party. They also undertake to take the following measures immediately on receipt of a written demand from the Government of the other party:
a) If the person endeavouring to foment insurrection is a subject of the Government which receives the application to take measures, he should, after the matter has been legally investigated and established, receive a deterrent punishment which will put an end to his actions and prevent their recurrence.
b) If the person endeavouring to foment insurrection is a subject of the Government making the demand over to the Government making the demand. The Government asked to surrender him shall have no right to excuse itself from carrying out this demand, but shall be bound to take adequate steps to prevent the flight of the person asked for, and in the event of the person asked for being able to run away, the Government from whose territory he has fled should undertake not to allow him to return, and if he does so, to arrest him and hand him over to his Government.
c) If the person endeavouring to foment insurrection is a subject of a third Government, the Government to which the demand is made and which finds the person in its territories shall, immediately and directly after the receipt of the demand of the other Government, take steps to expel him from its country, and to consider him as undesirable and to prevent him from returning.

Article 10: The two high contracting parties agree not to receive anyone who has fled the jurisdiction of his Government, regardless of circumstances, and are bound to return any fugitives who cross the border to their own Government.

Article 11: The two high contracting parties undertake to prevent their Amirs, Amils and officials from interfering in any way with subjects of the other party, and to prevent any disturbance or misunderstandings arising from such actions.

Article 12: Each of the two high contracting parties recognises that the people of all areas accruing to the other party by virtue of this treaty are subjects of that party. Each of them undertakes not to accept as his subjects any person who is subject to another party except with the consent of party.

Article 13: Each of the two high contracting parties undertakes to announce a full and complete amnesty for all crimes and hostile acts which may have been committed by any person who is a subject of the other party. Similarly, each of the two high contracting parties undertake to issue a full, general and complete amnesty to those of his subjects who have taken refuge or joined with the other party in any manner.

Article 14: Each of the two high contracting parties undertakes to return the property of those it pardons, in accordance with the laws of the country. They similarly undertake not to retain any goods or chattels belonging to subjects of the other party.

Article 15: Each of the two high contracting parties undertakes not to intermeddle with a third party of any kind in any matter which may injure the interests of the other party in any way.

Article 16: The two high contracting parties, who are bound by Islamic brotherhood and Arab origin, announce that their two nations are one nation, that they do not wish evil to anyone, and that they will do their best to promote the interests of their nation, intending no hostility to anyone.

Article 17: In the event of any external aggression on the country of one of the two high contracting parties, the other party shall be bound to carry out the following undertakings:
a) To adopt complete neutrality secretly and openly.
b) To co-operate mentally and morally as far as possible.
c) To undertake negotiations with the other party to discover the best way of guaranteeing the safety of that party.

Article 18: In the event of insurrection or hostilities taking place within the country of one of the high contracting parties, both of them mutually undertake as follows:
a) To take all necessary effective measures to prevent aggressors or rebels from making use of their territories.
b) To prevent fugitives from taking refuge in their countries, and to expel them if they do enter.
c) To prevent his subjects from joining the rebels and to refrain from encouraging or supplying them
d) To prevent assistance, supplies, arms and ammunition reaching the enemy or rebels.

Article 19: The two high contracting parties announce their desire to improve and increase communications and trade between the two countries, and to reach a customs agreement.

Article 20: Each of the two high contracting parties declares his readiness to authorise his representatives and delegates abroad, if such there be, to represent the other party, whenever the other party desires this, in any matter or at any time. It is understood that whenever representatives of both parties are together in one place they shall collaborate to unify their policy to promote the interests of their two countries, which are one nation. It is understood that this article does not restrict the freedom of either side in any manner whatsoever in any of its rights. Similarly, it cannot be interpreted as limiting the freedom of either of them or of compelling either to adopt this course.

Article 21: The contents of the agreement signed on 5 Shaban, 1350, shall in any case be cancelled as from the date of ratification of this treaty.

Article 22: This treaty shall be ratified and confirmed by Their Majesties the two Kings in the shortest possible time. It shall come into force as from the date of the exchange of the instruments of ratification, except as regards what has been laid down in Article 1, relative to the ending of the state of war immediately after signature. It shall continue for 20 complete lunar years. It may be renewed or modified during the six months preceding its expiry. If not renewed or modified by that date, it shall remain in force until 6 months after such time as one party has given notice to the other party of his desire to modify it.

Article 23: This treaty shall be called the 'Treaty of Taif". It has been drawn up in two copies in the noble Arabic language, each of the two high contracting parties having one copy.

SUMMARY OF ARBITRATION COVENANT
Each of the two high contracting parties agree to refer to arbitration in the case of dispute within one month of receiving such a demand for arbitration from the other party. The arbitration committee shall be composed of equal numbers selected by each party, and decisions will be made on the basis of a majority vote. Decisions of the arbitration committee shall be immediately binding and the costs of arbitration will be shared.
Source:
http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/about%20yemen/agreements/The%20Treaty/Taif.htm (accessed 4th November 2004)

1.13 Saudi-Yemeni Memorandum Of Understanding (1995)

Saudi-Yemeni Memorandum of Understanding - 26 February 1995

Article One: Both parties confirm their adherence to the legality and obligatory nature of the Treaty of Ta'if, signed on 6th Safar 1353 AH, corresponding to 30 May 1934 and its annexes — henceforth known as "the treaty";

Article Two: Within a period of not more than 30 days, a committee shall be formed in which both sides will be equally represented. The duties of the committee shall be to renew the border marks, according to the reports annexed to the treaty, whether or not they still exist or have vanished ... from the coastal point at Ras al-Mu'awaj ... [to] ... Jabal al-Thar ... using modern scientific methods for installing the marks (pillars): a specialised firm — chosen by both parties — shall be contracted to execute this task and will work under the supervision of the committee;

Article Three: The current committee formed by both parties will continue in its tasks by specifying as necessary procedures and moves that will lead to the demarcation of the rest of the boundary, beginning [in the west] at Jabal al-Thar until the end of the two countries [in the east]: these should include agreement on the method of arbitration in case of disagreement between the two countries;

Article Four: A joint committee will be formed to be in charge of designating maritime boundaries in accordance with international law, starting from the border point on the Red Sea coast mentioned above in Article Two;

Article Five: A joint high—level military committee consisting of representatives from both parties will be formed to ensure that no installations are emplaced along the borders of the two countries and also to ensure that no military movements take place along the border zone;

Article Six: A joint ministerial committee will be formed to develop economic, commercial and cultural relations between the two countries and to consolidate cooperation between them. This committee will begin its duties within 30 days of the signature of this memorandum;

Article Seven: A joint high committee will be nominated to ensure and facilitate the duties assigned to the above-mentioned committees and to remove any obstacles or difficulties which might arise during the course of their assignments;

Article Eight: Both countries confirm existing obligations whereby their territories will not be used as bases or centres of aggression against the other: nor will they be used for political, military or propaganda purposes against the other party;

Article Nine: In order to provide a suitable and friendly atmosphere in which negotiations might flourish, each party will be obliged not to carry out hostile activities against the other;
Article Ten: This note contains nothing that might amend al-Taif treaty and its annexes, including the border demarcation reports;

Article Eleven: The work of all of the committees mentioned above shall be recorded in minutes, to be signed by the nominated representatives of each side.

Source:
http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/The%20Treaty/sa-yem-mem.htm
(accessed 4th November 2004)

International Boundary Treaty between the Republic of Yemen and the Kingdom of Saudi Arabia - 12 June 2000

Preamble omitted.

Article 1
The two contracting sides affirm the necessity and validity of the Treaty of Ta'if and its appendices, including the reports of the borders attached to it. They also affirm their commitment to the Memorandum of Understanding signed between the two countries on 27 Ramadan 1415 AH.

Article 2
The final and permanent demarcation line of the borders between the Republic of Yemen and the Kingdom of Saudi Arabia is defined as follows:

a) The first part: This portion begins from the coastal marker on the Red Sea (precisely at the quay of Ra's al-Ma'uj Shami, Radif Qarad outlet) and its co-ordinates are as follows: latitude 16, 24, 14, 8 north, and longitude 42, 46, 19, 7 east; it ends at the marker of Jabal al-Thar, whose co-ordinates are 44, 21, 58 east and 17, 26, 0 north (its details are shown by the co-ordinates in Appendix 1). The [national?] identity of the villages lying on the course of this part of the line will be defined according to what was stipulated by the Treaty of Ta'if and its appendices, including their tribal affiliation. In the event that any of the co-ordinates falls on the position or positions or villages of either party, the reference point for establishing the affiliation of this village, or these villages, will be its relationship to one of the two parties, and the course of the line will be amended accordingly when the border marker is set.

b) The second part: This is that portion of the border line which has not yet been defined but the two contracting parties have agreed to define this part amicably. This part begins at Jabal al-Thar (co-ordinates defined above) and ends at the geographical point of intersection between the line of latitude 19 north and the line of longitude 52 east (details of its co-ordinates are set out in Appendix 2).

c) The third part: This is the maritime portion of the border which begins from the land marker at the coast (precisely at the quay of Ra's al-Ma'uj Shami, Radif Qarad outlet) - co-ordinates defined above - and ends at the limit of the sea border between the two countries (details of its co-ordinates are in the accompanying document No. 3).

Article 3

(i) Desiring to set markers (columns) on the line of the border starting from the point where the two countries' borders meet the borders of the fraternal Sultanate of Oman at the geographical point of intersection between the line of latitude 19 north and the line of longitude 52 east and ending exactly at the wharf of Ras Al-Mua'j Shami, Radif Qarad outlet (co-ordinates shown in Appendix 1), the two contracting parties will commission an international company to undertake a field survey of the entire land and sea borders.

The specialised company carrying out the work and the joint team from the two contracting parties must follow absolutely the distances and directions between each point and the next one, and the other specifications which appear in the border reports attached to the Treaty of Ta'if. These provisions are binding on the two parties.

(ii) The specialised international company shall undertake preparation of detailed maps of the line of the land border between the two countries. These maps, when signed by representatives of the Republic of Yemen and the Kingdom of Saudi Arabia, will be relied upon as official maps demarcating the border between the two countries and will become an integral part of this treaty. The two contracting parties will sign an agreement to cover the cost of work by the company commissioned to erect the markers along the land border between the two countries.

Article 4

The two contracting parties affirm their commitment to Article 5 of the Treaty of Ta'if regarding the withdrawal of any military position which is less than five kilometres from the line of the border as defined according to the reports of the border attached to the Treaty of Ta'if. In respect of the border line which has not yet been defined, starting from Jabal al-Thar up to the point of intersection of latitude 19 north with longitude 52 east, it is determined by Appendix 4 accompanying this Treaty.

Article 5

This treaty will take effect after ratification according to the consequent steps in both the contracting countries and the exchange of documents of ratification on the part of the two countries.

For the Republic of Yemen
Abd al-Qadir Abd al-Rahman Bagammal
Deputy Prime Minister, Foreign Minister
For the Kingdom of Saudi Arabia
Sa'ud Faisal
Foreign Minister

Appendix 4

The international border treaty between the Kingdom of Saudi Arabia and the Republic of Yemen regarding the organisation of pastoral rights, and the designation of the positions of armed forces beside the second part of the border line between the two countries, as indicated in this treaty, and the exploitation of shared natural wealth along the length of the land border line dividing the two countries.

(i)

a) The pastoral area on both sides of the second part of the border line indicated in this treaty is limited to 20 kilometers.

b) Shepherds from both countries may use the pastoral area and water sources on both sides of this part of border line in

accordance with tribal traditions and prevailing customs for a distance not exceeding 20 kilometers.
c) The two contracting parties shall hold annual consultations to set crossing points for the pastoral lands according to conditions and current prospects for pasture.

(ii) Among the citizens of the Kingdom of Saudi Arabia and citizens of the Republic of Yemen, shepherds shall be exempt from:

a) The system of residence and passports, and will be issued with transit cards by the competent authorities [of the countries] to which those shepherds are affiliated.
b) Taxes and duties on personal belongings, foodstuffs and consumer goods that they carry with them. This does not prevent either of the parties from imposing customs duties on animals and commodities crossing for the purpose of trade.

(iii) Each of the contracting parties may impose restrictions and regulations which they consider appropriate regarding the number of vehicles crossing on to their territory with shepherds, in addition to the type and number of firearms which shepherds may carry provided that they are licensed by the relevant authorities in both countries, together with the identification of those carrying them.

(iv) In the event of that the outbreak of an epidemic disease affects animal wealth, each party has the right to take the necessary preventive measures and to impose restrictions on the import and export of infected animals. The specialised authorities in both countries should cooperate as far as possible to limit the spread of the epidemic.

(v) It is not permitted to either of the contracting parties to position armed forces at a distance of less than 20 kilometres on either side of the second part of the border line indicated in this treaty, and the activity of any party is limited to movement of mobile security patrols with customary weapons.

(vi) In the event of the discovery of shared natural wealth suitable for extraction and investment along the line of the border between the two countries, beginning precisely at the quay of Ra's al-Ma'uj Shami, Radif Qarad outlet, to the point of intersection of the line of longitude 19 east with the line of latitude 52 north**, the two contracting parties will undertake the necessary negotiations between them for the joint exploitation of that wealth.

(vii) This appendix is considered an integral part of this treaty and will be ratified by the methods authorised in the two countries.

* The translation follows the Arabic text published in al-Hayat newspaper. It should say "latitude 19 north to longitude 52 east".

** Again, this follows the Arabic text published in al-Hayat, but it would locate the border in Poland.

Source: Unofficial translation by Brian Whitaker of the Arabic text published in al-Hayat newspaper on the 22nd June 2000, found at:
http://www.nic.gov.ye/English%20site/SITE%20CONTAINTS/about%20yemen/agreements/The%20Treaty/JEDDAH.htm (accessed 4th November 2004)

Appendix 2

Relevant Maps

2.1 Arabian Peninsula – Administrative Divisions (4 March 1960)

2.2 Central And Southern Arabia (2 January 1959)

2.3 Saudi Arabia – Administrative Divisions (10 April 1982)

2.4 H. A. Al-Dhamari Map Republic Of Yemen (July 26 1994)

2.5 Boundaries In The Middle East, Al-Ghamdi, p.20

2.6 Yemen National Information Centre Map Showing Asir As Part Of Vilayet Yemen see http://www.nic.gov.ye/SITE%20CONTAINTS/aboutyemen/history/P10.html (last visited 04/01/05).

2.7 Abdul Raheem's Map, p. 192

2.8 Map of the Mandate Areas of Arabia Treaty of Lausanne Map, compiled by Lt.-Col. Lawrence Martin, Geographer of the Institute of Politics, *The Treaties of Peace 1919-1923, Vol. II*, Carnegie Endowment for International Peace, New York, 1924; http://www.lib.byu.edu/~rdh/wwi/1918p/lausanne.html (last visited on 4th January 2004)

2.9 Foreign Office Map showing the blue and violet lines in the Appendix of Maps FCO 08/1115.

2.10 Al-Ghamdi Map showing factors influencing the location of the Logical Boundary (figure 6.2) p. 220.

2.11 Former Yemen Oil Concessions Map, El-Rayyes, R. Southern Wind: Yemen and its Role in Arabia (1990-1997), Riad El-Rayyes Books (1998)

2.12 A comparison between the former Saudi claim and the settlement according to the Treaty of Jeddah, prepared for the author.

2.13 Map of Farasan Islands (No. 27) produced by the Military Survey of the Ministry of Defence and Aviation and General Inspection, published by the Seaport Authority of Saudi Arabia (1418 AH, corresponding to 1998 AD) – note that the maritime boundary has been added by the author for explanatory purposes.

2.14 Al-Ghamdi Map proposing solutions to the Saudi-Yemeni boundary dispute (figure 6.3) p. 221.

2.15 Official British map submitted to the Buraimi Arbitration Tribunal, prepared by FO Research Department, May 1955 – Map B: see the Buraimi Memorials 1955, Archive Editions, Gerrards Cross (1987).

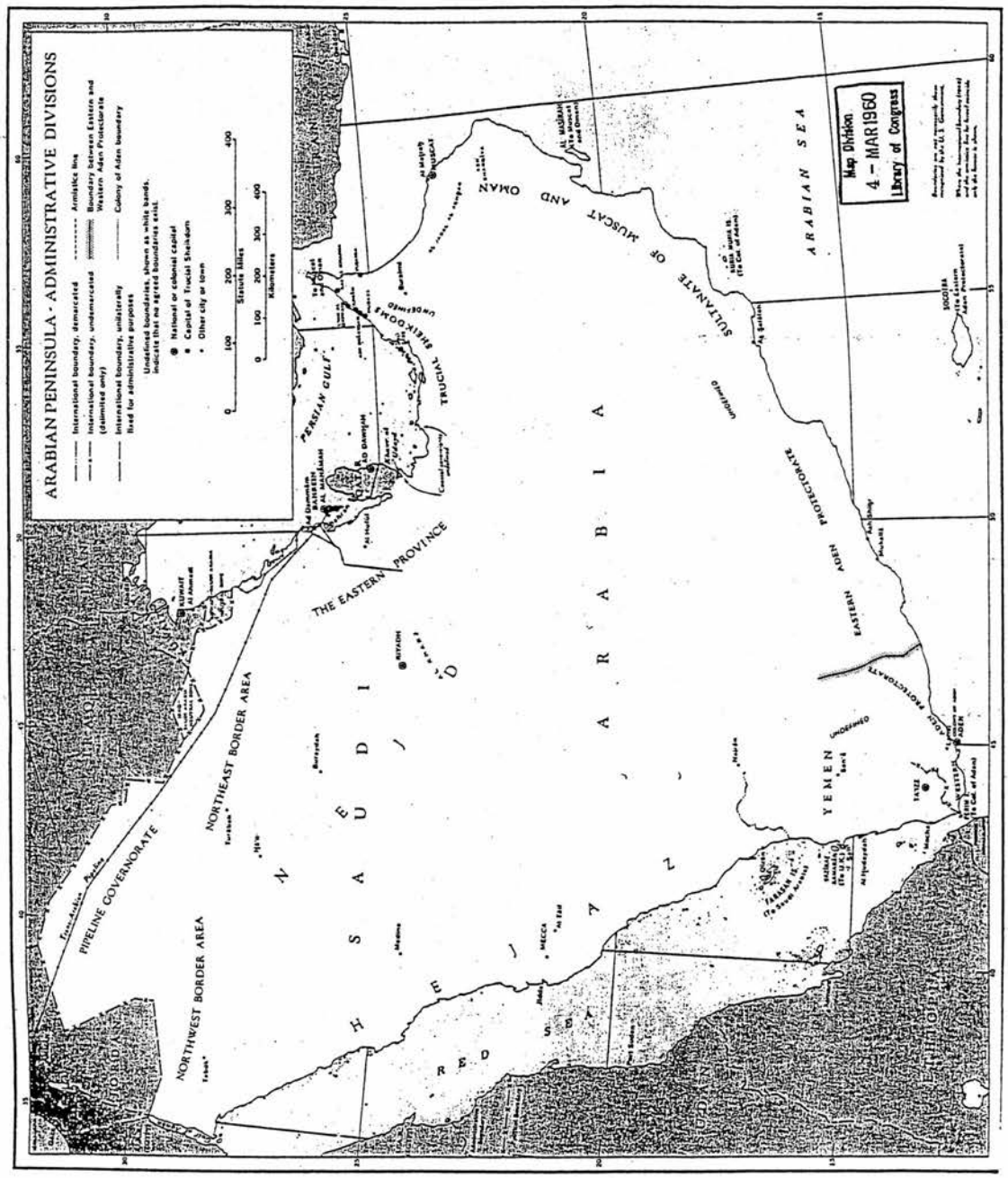
2.16 Map of International Boundaries of the Arabian Peninsula, Map 1 in Schofield, The International Boundary between Yemen and Saudi Arabia, in Tensions in Arabia: The Saudi-Yemeni Fault Line, Nomos Verlagsgesellschaft, Baden-Baden (2000) p. 49.

2.17 Map 2 in Schofield, The International Boundary between Yemen and Saudi Arabia, in Tensions in Arabia: The Saudi-Yemeni Fault Line, Nomos Verlagsgesellschaft, Baden-Baden (2000) pp. 50-51.

2.18 Official Saudi Map printed post Treaty of Jeddah delimitation in 2000, produced by Military Survey of the Ministry of Defence, Aviation and General Survey – the map provides a disclaimer that it does not display a reference to an international boundary.

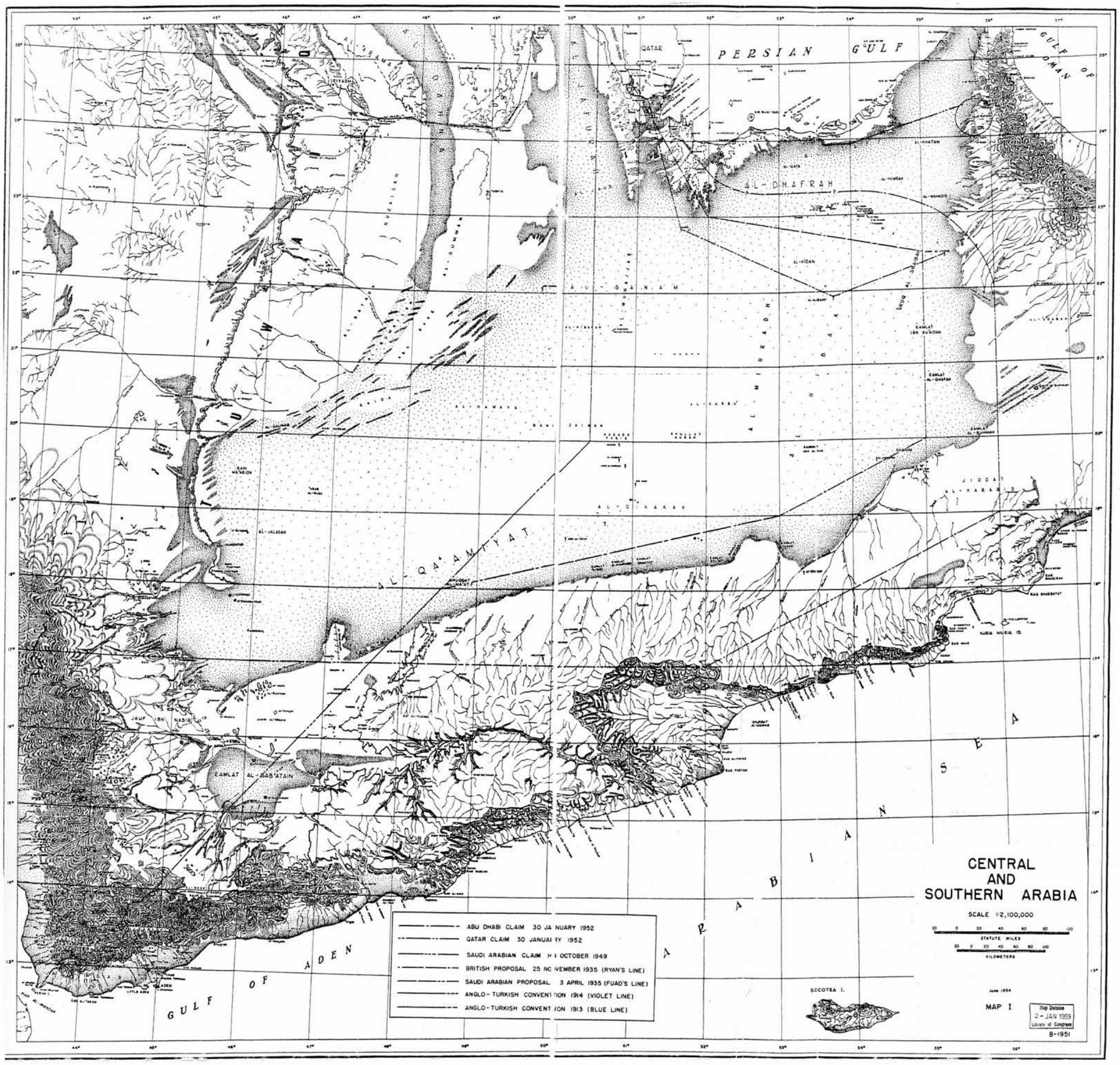
2.19 Map called 'Physical Political Map- The Arabian Peninsula' prepared by Muhammad `Abdul-Monem, and submitted by Saudi Arabia to the Buraimi Arbitration Tribunal: see the Buraimi Memorials 1955- Appendix of Maps.

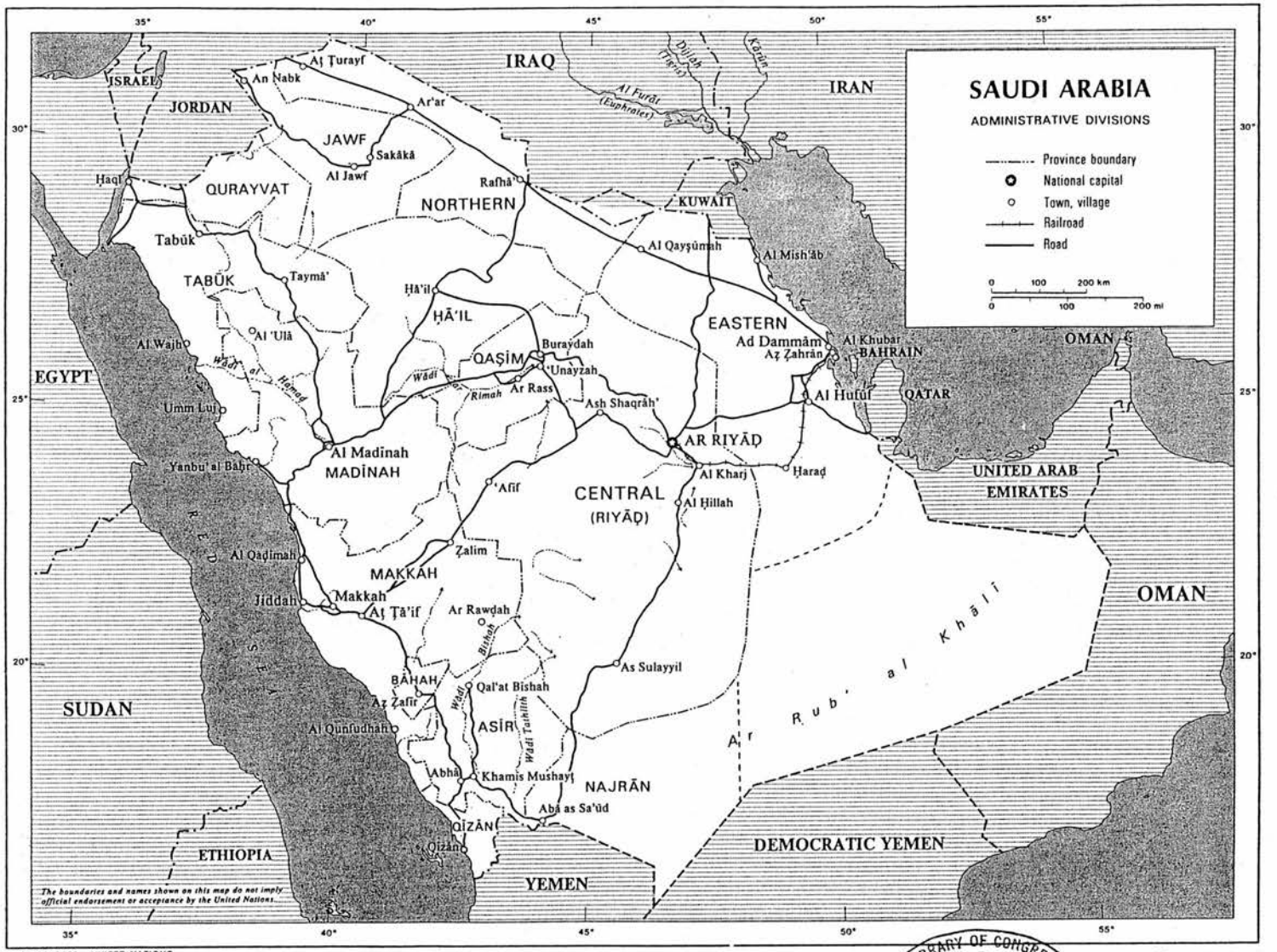
Map 2.1


ARABIAN PENINSULA - ADMINISTRATIVE DIVISIONS
International boundary, demarcated
International boundary, undemarcated (delimited only)
International boundary, unilaterally fixed for administrative purposes
Undefined boundaries, shown as white bands, indicate that no agreed boundaries exist.
National or colonial capital
Capital of Trucial Sheikdom
Other city or town
Armistice line
Boundary between Eastern and Western Aden Protectorate
Colony of Aden boundary
Statute Miles
Kilometers
Map Division
4 - MAR 1960
Library of Congress
SAUDI ARABIA
YEMEN
PERSIAN GULF
RED SEA
ARABIAN SEA
GULF OF OMAN
SULTANATE OF MUSCAT AND OMAN
ADEN PROTECTORATE
EASTERN
WESTERN
PROTECTORATE
TRUCIAL SHEIKDOMS
THE EASTERN PROVINCE
NORTHEAST BORDER AREA
NORTHWEST BORDER AREA
PIPELINE GOVERNORATE
UNDEFINED
MUSCAT
MECCA
ADEN
RIYADH
KUWAIT
DHAHRAN
BAHRAIN
DOHA
ABU DHABI
SHARJAH
DUBAI
RAS AL KHAIMAH
UMM AL QAIWAIN
AJMAN
SHARJAH
SHEIK OOMS
SHEIK SAID
SHEIK OTHMAN
SHEIK ABDALI
SHEIK SAID
SHEIK OTHMAN
SHEIK ABDALI

7019

map 2.2


PERSIAN GULF
QATAR
GULF OF OMAN
AL-DHAFRAH
AL-QA'AMIYAT
GULF OF ADEN
ARABIAN SEA
SOCOTRA I.
ABU DHABI CLAIM 30 JANUARY 1952
QATAR CLAIM 30 JANUARY 1952
SAUDI ARABIAN CLAIM 1 OCTOBER 1949
BRITISH PROPOSAL 25 NOVEMBER 1935 (RYAN'S LINE)
SAUDI ARABIAN PROPOSAL 3 APRIL 1935 (FUAD'S LINE)
ANGLO-TURKISH CONVENTION 1914 (VIOLET LINE)
ANGLO-TURKISH CONVENTION 1913 (BLUE LINE)
CENTRAL AND SOUTHERN ARABIA
SCALE 1:2,100,000
STATUTE MILES
KILOMETERS
June 1954
MAP I
Map Division
2 - JAN 1959
Library of Congress
8-1951



MAP NO. 3062 UNITED NATIONS
NOVEMBER 1979

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Map 2.3

Map 2.4

REPUBLIC OF YEMEN

Drawing of: prof. Hussain A. Al-Dhamari
Sanaa - Tel. 78043

SAUDI ARABIA

RUB-AL KHALI

AL SAYAR

AL KURAB

AL GUFAB

HARAMAUT

AL MAHRAH

OMAN

RED SEA

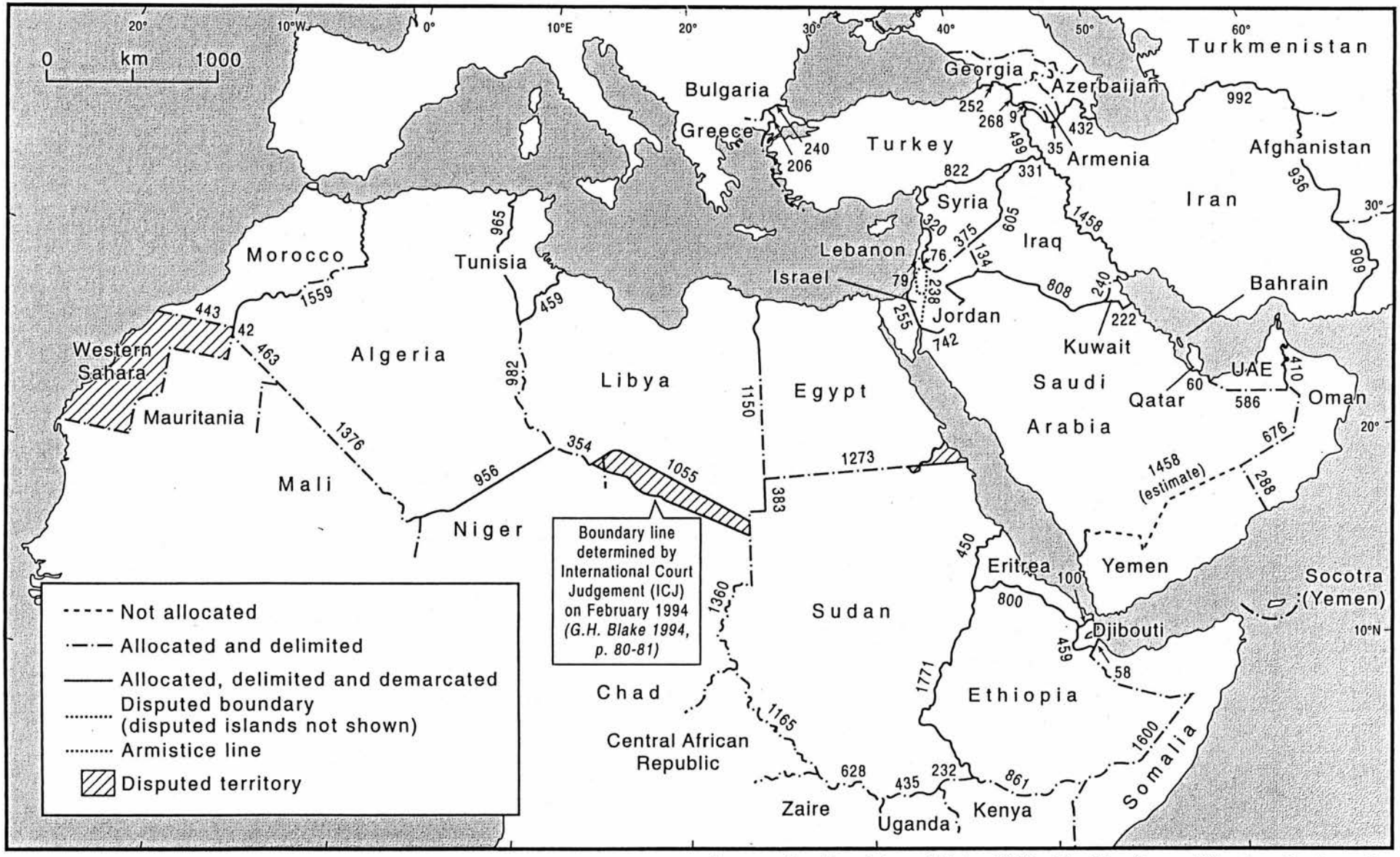
GULF OF ADEN

ARABIAN SEA

ALMANA

Khousam Al-Sawad
Khoushm Abou Ramdah
Khoushm Al-Zoufor
Khoushm Sudair
Khoushm Ghurab
Al-Gra'ma
Uruk Bani Hajriran
Uruk Al-Awrah
Al-Jidah
Abea-Shaddad
Al-Gaamiyat
Uruk Al-Hayshah
Shaggat Al-Maatij
Shaggat Al-Khariaf
Shaggat Al-Matar
Al-Mushottahah
Manga Najran
Ramlet Al-Aramcom V.
Jawfahmadh
Shaggat Najran
Shaggat Al-Yutama
Shaggat Ajaader Khab
Uruk Al-Kathieb
Uruk Mashinah
Al-Wadia
Al-Sareura
Bani Malian
Uruk Al-Dayra
Mugabil
Al-Ramarim
Husn Al-jawaba
Haram Al-thuwair
Khoushm Al-Jabal
Ramlet Dahim
Raiwan
Shagat Abrag
Ben Adian
Al-Ablah
Ramlet Al-Adasa
Mukhattirat Al-saudaa
Al-Ja'fi
Al-Jawfa
Al-Hawmak
Al-Hathshafat
Al-Ahlaf
Al-Hazem
Al-Gail
Al-Thaniya
Shahm Al-Bagar
Shahwah
Bir Asaker
Al-Galan
Sa'ayun
Shibam
Tarim
Seiyun
Manouka
Zamakh
Gaa Al-Gayoul
Sinaw
Thamud
Tatlah
Khalif
Masaid
Sharbithat
Al-Ajazae V.
Al-Ghaida
Damgaut
Hauf
Dhofan
Dubut
Itab
Ras Fartak
Kishen
Ras Itab
Saghut
Ras Darbat Ali
Ras Kusaiar
Ras Bashu
Ras Armah
Al-Mukalla
Burum
Hajar
Radoum
Ras Rujmina
Hisn Talab
Bir Ali
Jaula
Balhaf
Al-Hawra
Hisn Rashid
Hawar al Utya
Dathina
Wa'a Swaida
Hisn Salmud
Ahwar
Al-Khabar
Al-AWS
Shigra
Al-Adalah
Zinjibar
Al-Kowd
LAWDAR
LAHAJ
Al-Hareer
Al-Gara
Al-Harour
Al-Shaeng
Al-Wazia
Al-Madarba
Al-Mokha
Mawshij
Al-Khawkha
Al-Kabir
Al-Hanish Al-Saghir
Al-Fazih
Glaifega
Al-Hodydah
Al-Katib
Al-Tarjof
BAIT AL FAQIH
Naman
Al-Nabaaia
Al-Agar
Nu'ayb
Al-Lahaj
Bahar
Al-Hisi
Al-Hadi
Al-Abdiah
Naigab
Ras Isa
Zubayr
Al-Salif
BAJEL
Al-Khawkha
Al-Mokha
Al-Hodydah
Al-Tarjof
Glaifega
Al-Fazih
Al-Hanish Al-Saghir
Al-Kabir
Mawshij
Fatimah I.
Dhubab
Str. of Bab el Mandeb
ADEN
Al-Mansuriah
Al-Buraiqah
Bir Ahmed
Al-Fajara
Al-Bahah
Al-Ghaza
Al-Hamra
Al-Hamra
Al-Ghaza
Al-Hamra
Al-Hamra
Al-Ghaza
Al-Hamra
Al-Hamra

Figure 1.1: The status of boundaries in the Middle East and North Africa, 1996 (Boundary lengths in km.)



Source: after Drysdale and Blake, 1985: p79 with a few modifications by the author

2.5

Source: Al-Ghamdi's Ph.D, Durham University (1996), P. 20

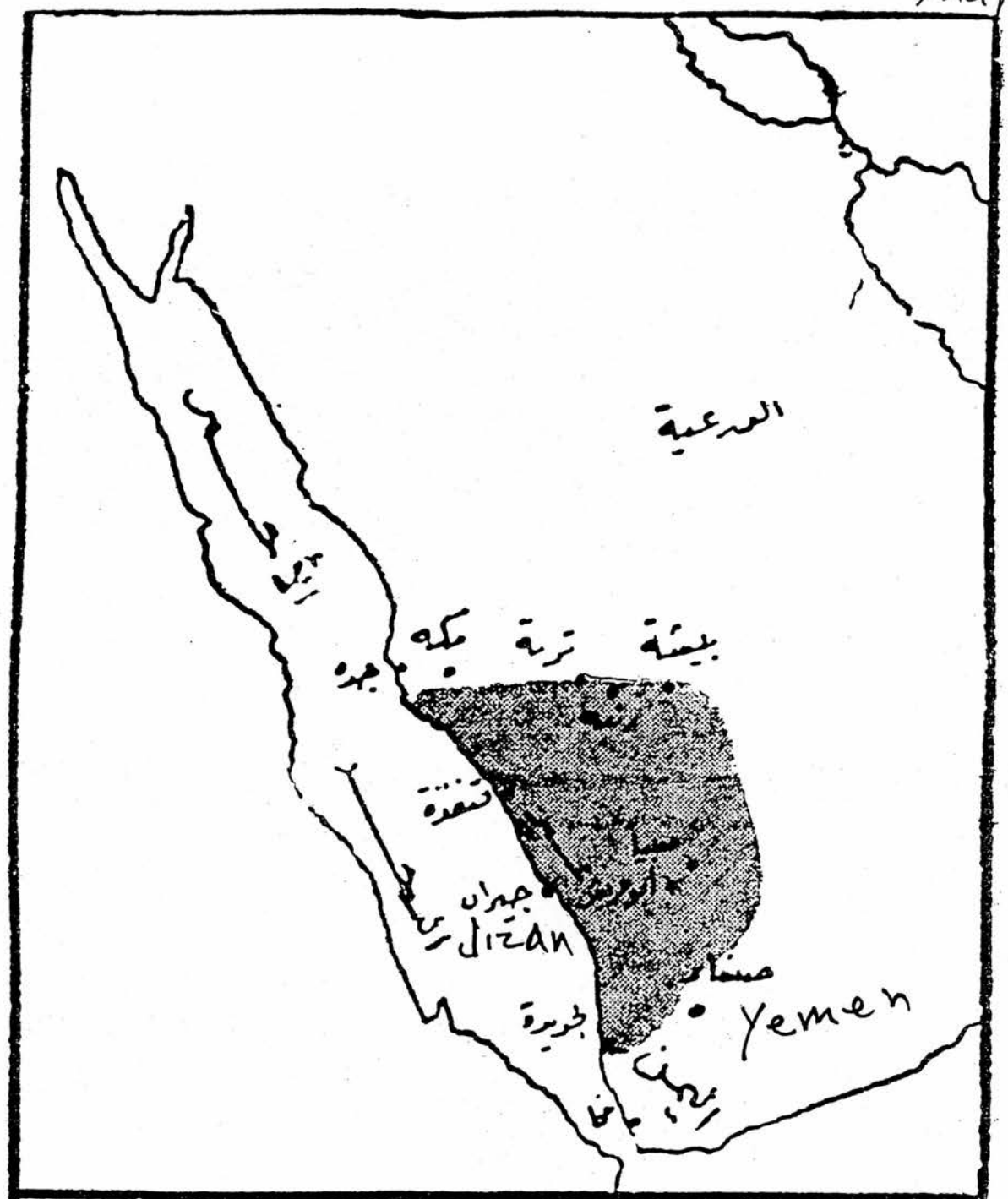
Map 2.6

2.6 Yemen National Information Centre Map Showing Asir & Jizan as a Part Of Ottoman Vilayet of Yemen

خريطة توضيحية لحدود ولاية اليمن في الفترة
الممتدة بين عامي (١٨٧٢ - ١٩١٨)

Source:
http://www.nic.gov.ye/SITE%20CONTAINTS/aboutyemen/history/P10.html (last visited 04/01/05).

Map 2.7



Map showing 1st Sandi State's Control in Yemen

المناطق اليمنية التى وصل اليها النفوذ السعودى

Source:
Abdl-Raheem, The First Sandi State (1745–1818)
Vol. I, P. 192

Map 2.8

MANDATES IN ARABIA

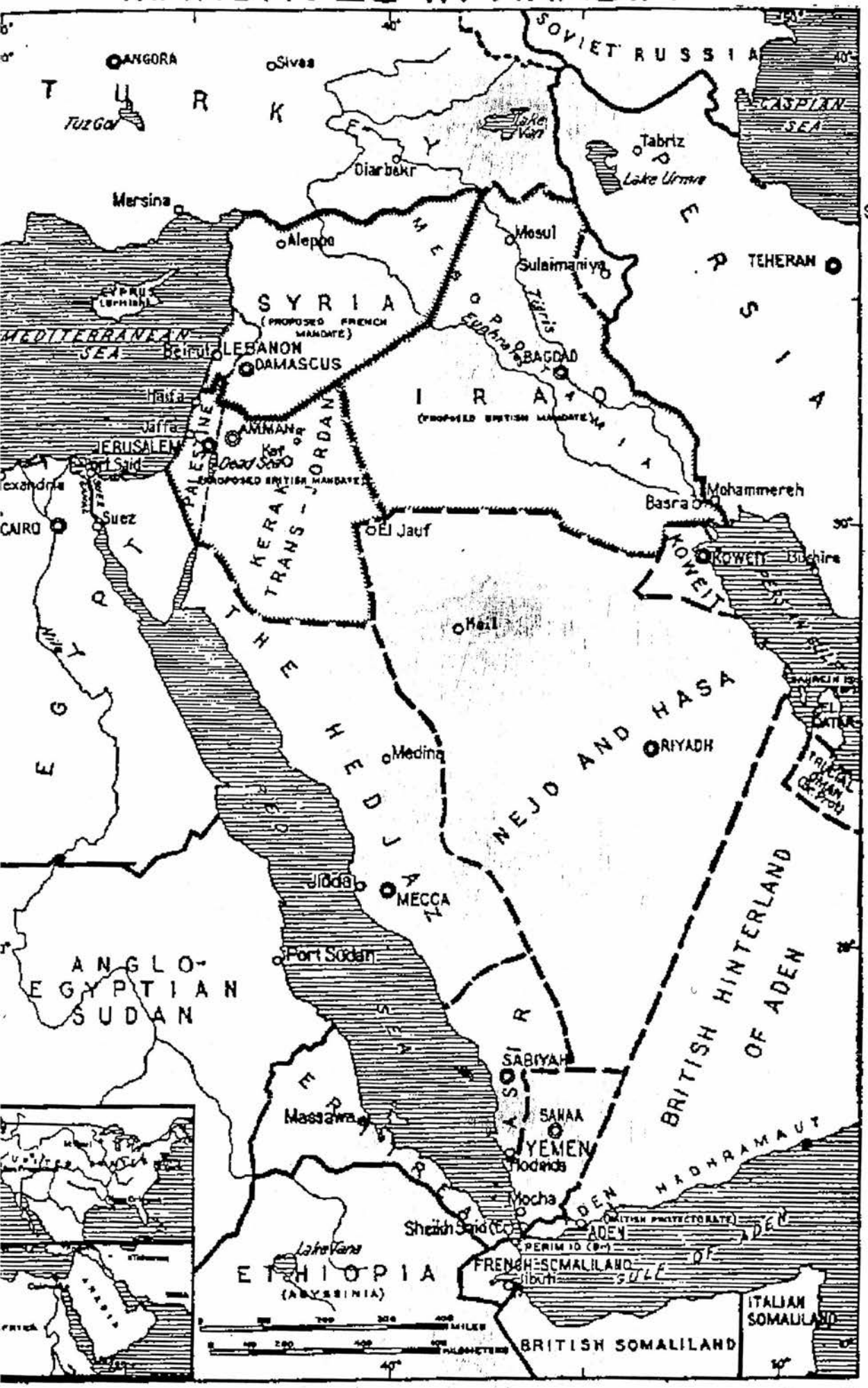


FIGURE 15

Compiled by
Col. Lawrence Martin

Map 2.9
Part 1

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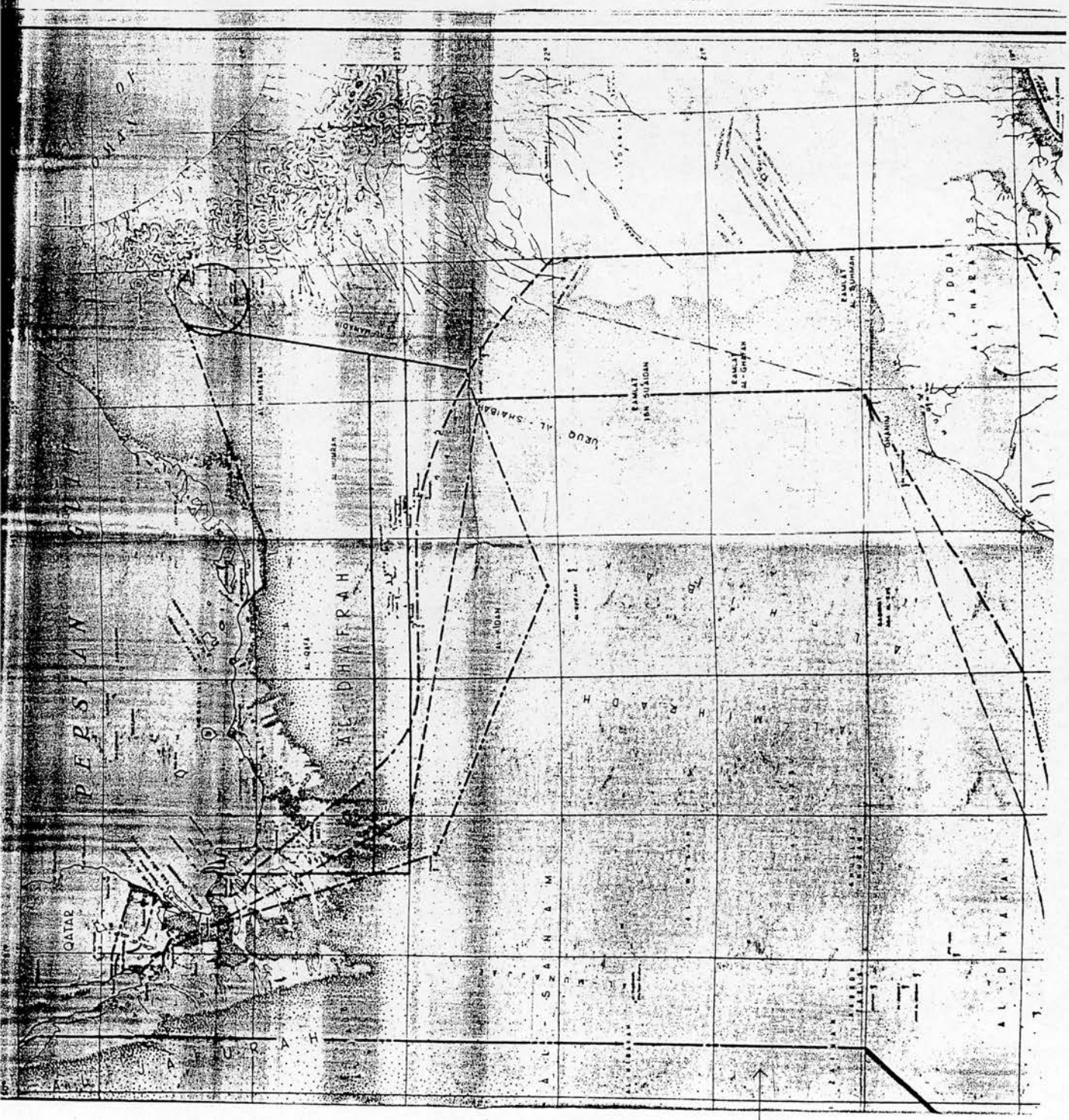
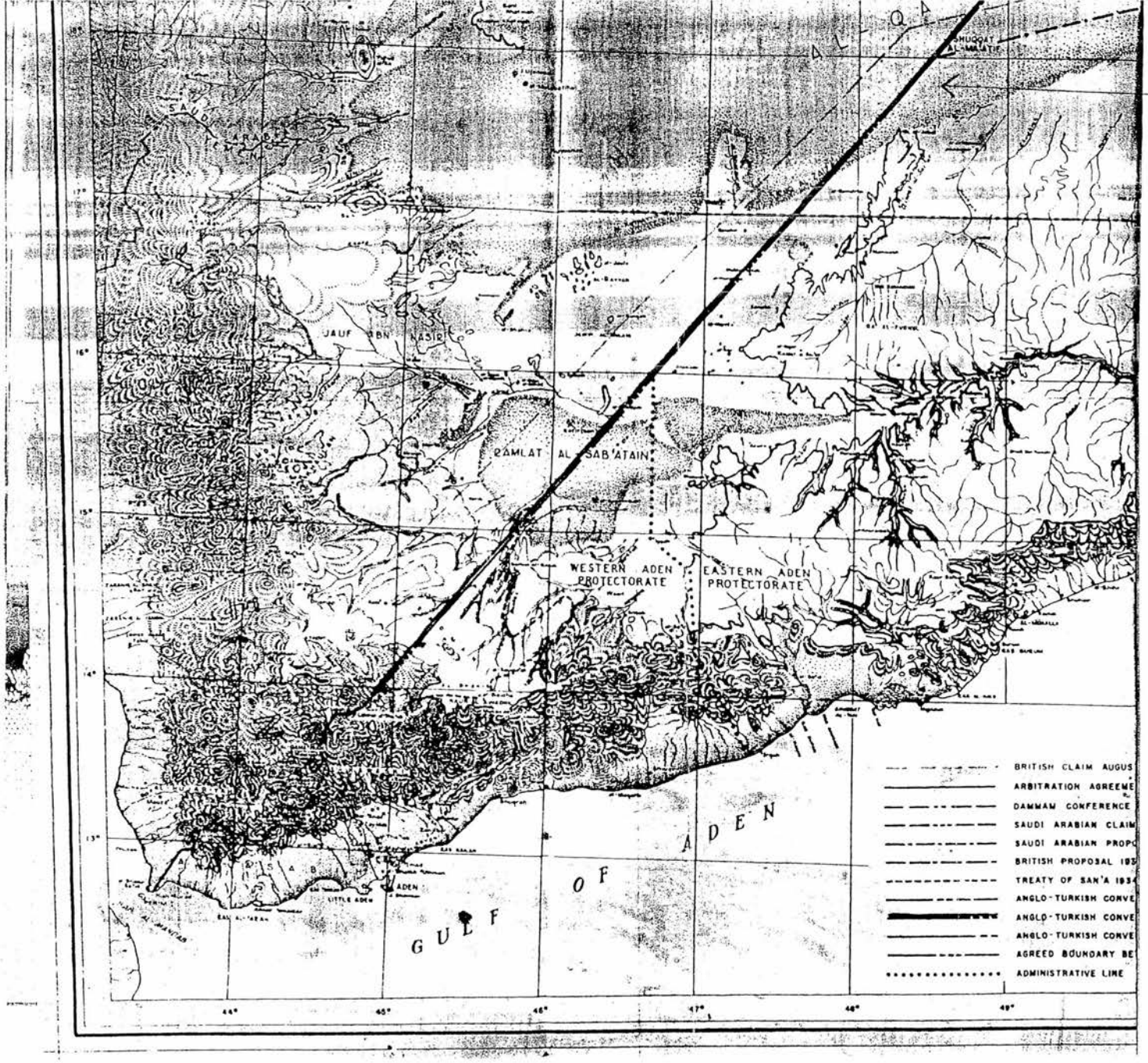


The Blue line as drawn in 1913 Anglo-Ottoman Convention

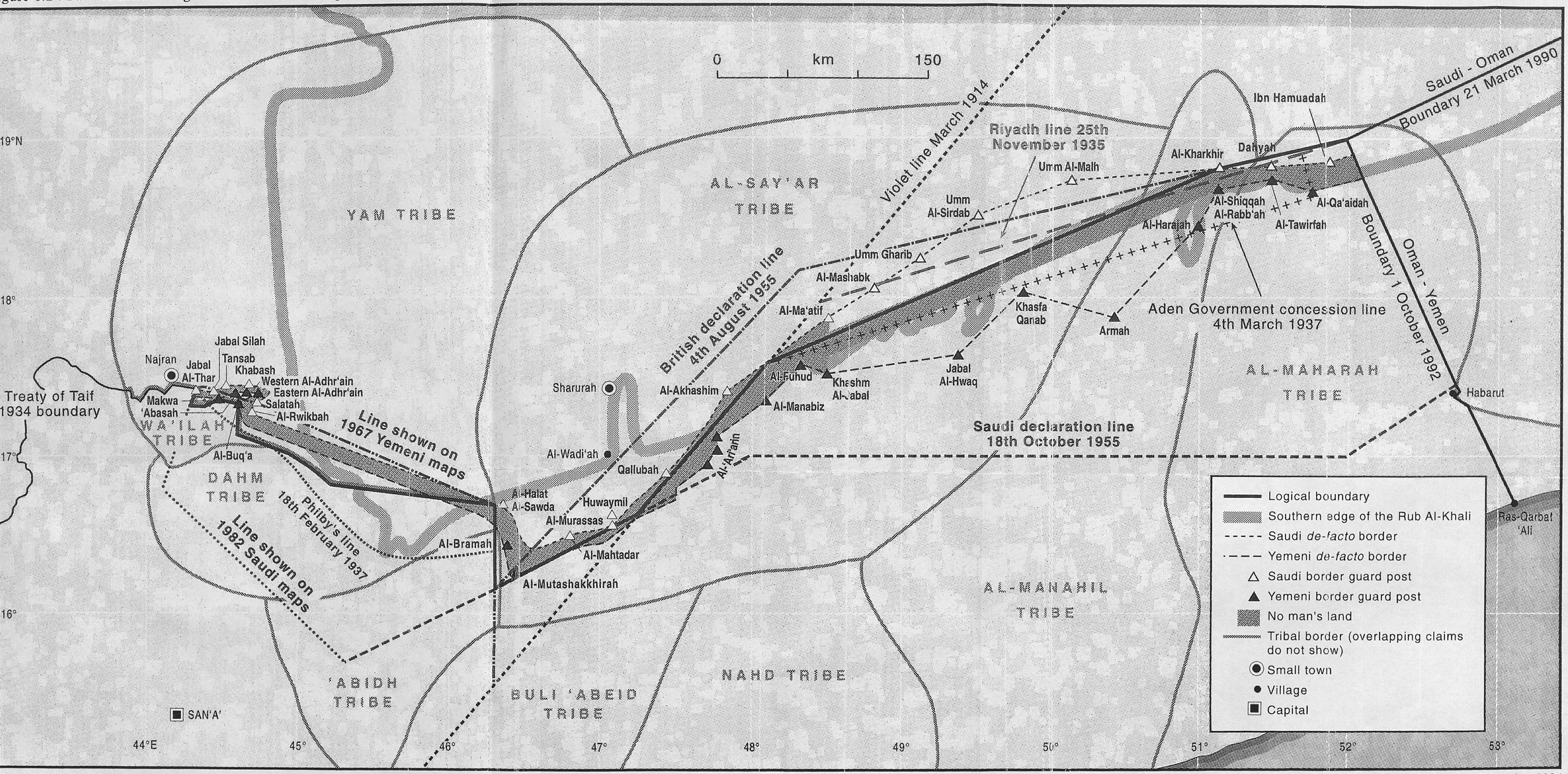


The Violet Line as was indicated in 1914 Anglo-Ottoman Convention

PUBLIC RECORD OFFICE
Ref: FO 608/115

Map 2.9
Part 2

gure 6.2 : Factors influencing the location of the Logical Boundary

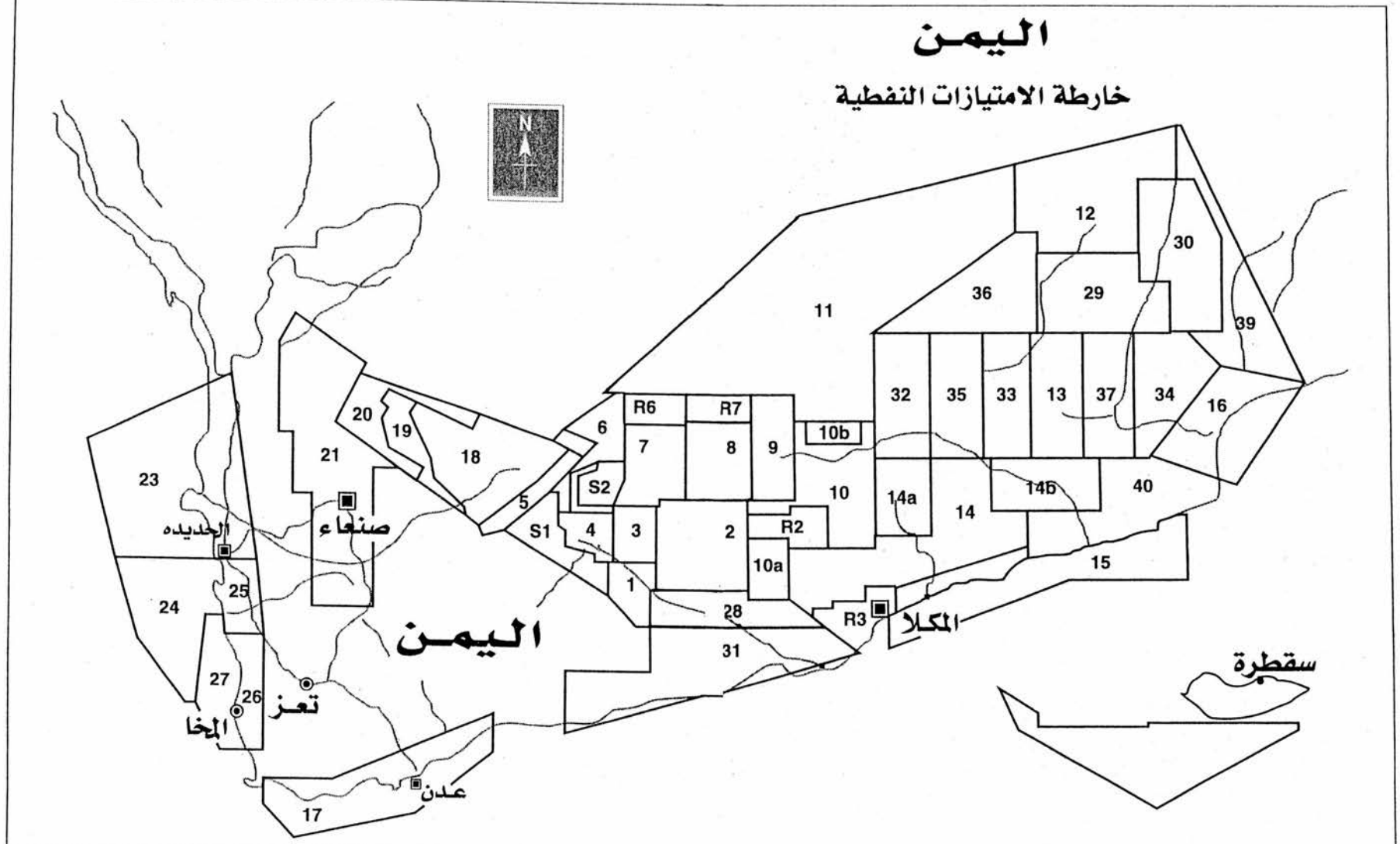


Source: Historical proposals after Schofield 1994 with a few modifications by the author; Author's Field Survey, July - December 1994

Source: Al-Ghandi's Ph.D, Durham University (1996), P. 220
Map is copied from Al-Ghandi's Ph.D

اليمن

خارطة الامتيازات النفطية



S1	قطاع دميس	7	قطاع البرقاء	13	الأرمح	21	سنترال بلاتو
S2	قطاع العقلة	8	قطاع عساكر	14	المسيلة	22	قطاع الزيدية
1	قطاع عماقين	9	قطاع الحجر	15	المكلا	23	قطاع أنتوفاش
2	قطاع المعبر	10	شرق شبوة	16	خليج القمر	24	الخطيب
3	قطاع جردان	10a		17	عدن/عبيان	25	الحديدة
4	قطاع عياد	10b	سار	18	قطاع مأرب – الجوف	26	المخا
5	قطاع جنة	11	سرحزر	19	الجوف	27	الجنبية
6	قطاع أريام	12	شمال سناو	20	وادي الجوف	28	بلهف

29	جنوب سناو	37	مرياط
30	حبروت	38	سقطرة
31	جنوب بلهف	39	دمقوت
32	حوازم	40	
33	قطاع الفرت	R2	
34	جيزة		
35	هود		
36	ثمود		

Map 2.11

Map 2.12

المملكة العربية السعودية

الجمهورية اليمنية

سلطنة عمان

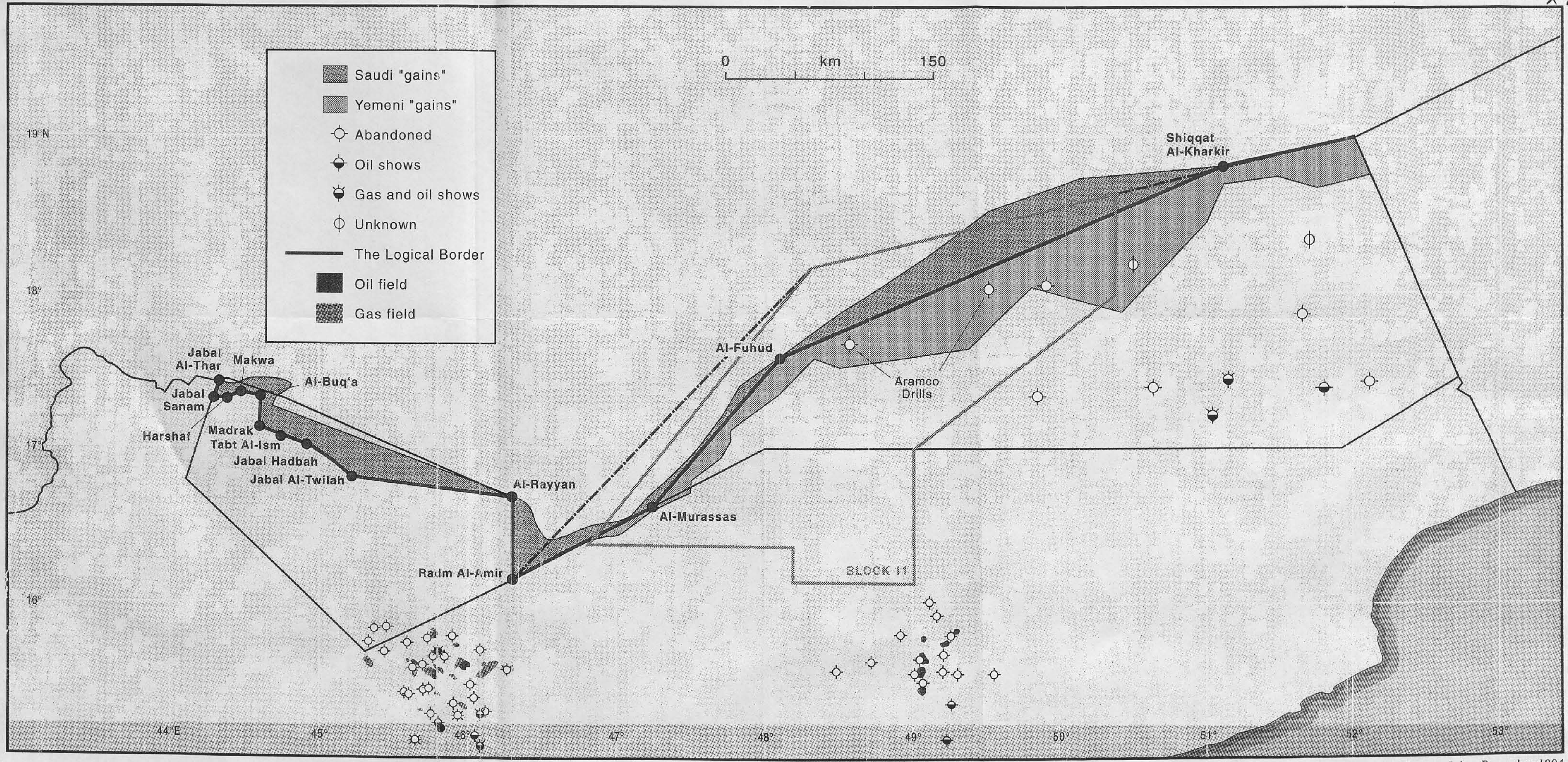
اليمن

الجمهورية

خط الحدود بين المملكة العربية السعودية والجمهورية اليمنية

٤١° ٤٢° ٤٣° ٤٤° ٤٥° ٤٦° ٤٧° ٤٨° ٤٩° ٥٠° ٥١° ٥٢° ٥٣° ٥٤°

Figure 6.3 : Proposed resolution to the Saudi - Yemeni boundary dispute



Source: Author's Field Survey, July - December 1994

Source: Al-Ghamdi's Ph.D. Durham University (1996), p. 221

MAP B

2.15

Blue Line of the Anglo-Turkish Convention of July 29th, 1913, showing the boundary of the Ottoman Sanjak of Nejd

Violet Line of the Anglo-Turkish Convention of March 9th, 1914, showing boundary of Ottoman territory

Approximate line of the frontier claimed by Ibn Sa'ud on April 3rd, 1933

Frontier offered to Ibn Sa'ud by Sir A. Ryan at Riyadh on November 25th, 1935 ("Riyadh Line")

Sa'udi claim, 1949

Abu Dhabi claim, 1952

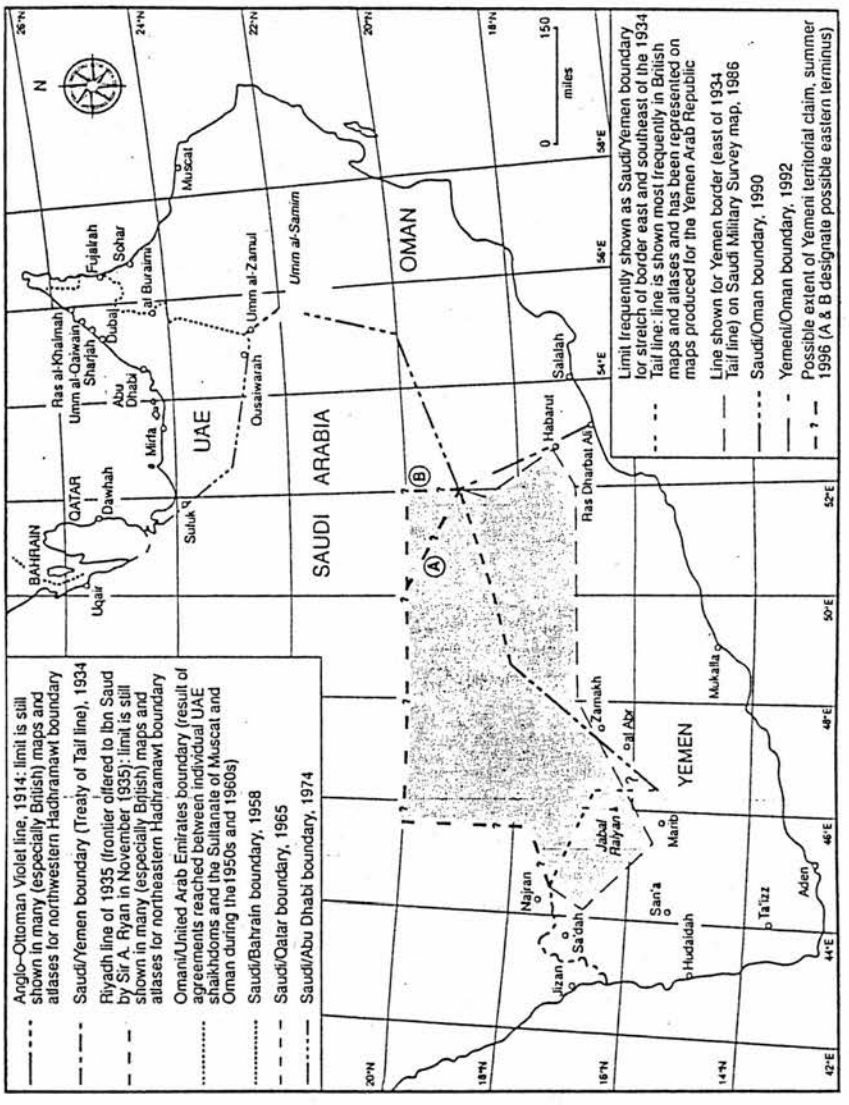
International frontiers

British offer April 9th 1935

RESEARCH DEPT, F.O., May 1955

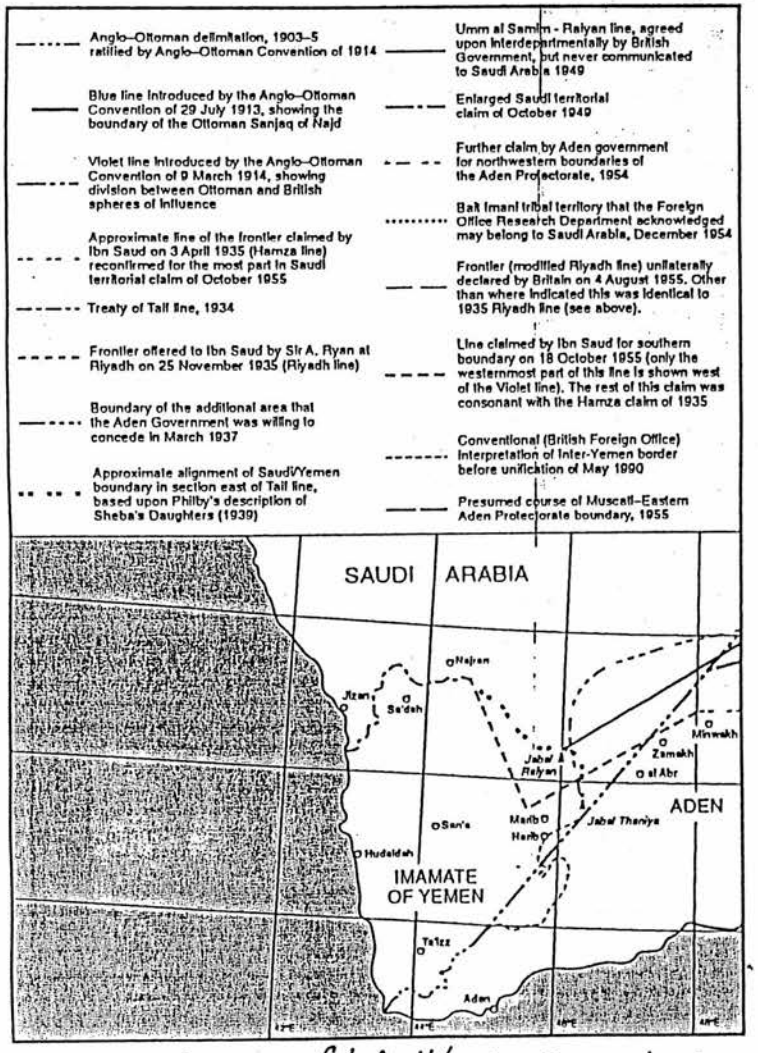
Map 2.16

Map 1 – International Boundaries of the Arabian Peninsula

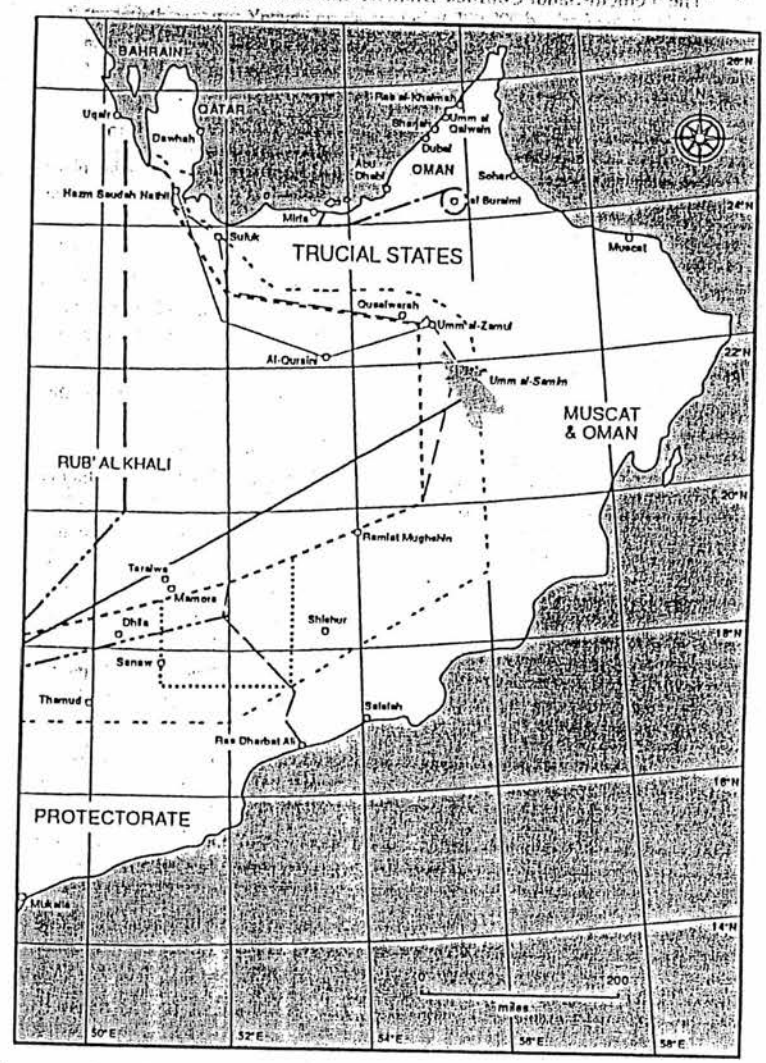


Source: Schofield's map, See book: Tensions in Arabia: The Saudi-Yemeni Fault Line, Baden-Baden (2000), p. 49

Map 2



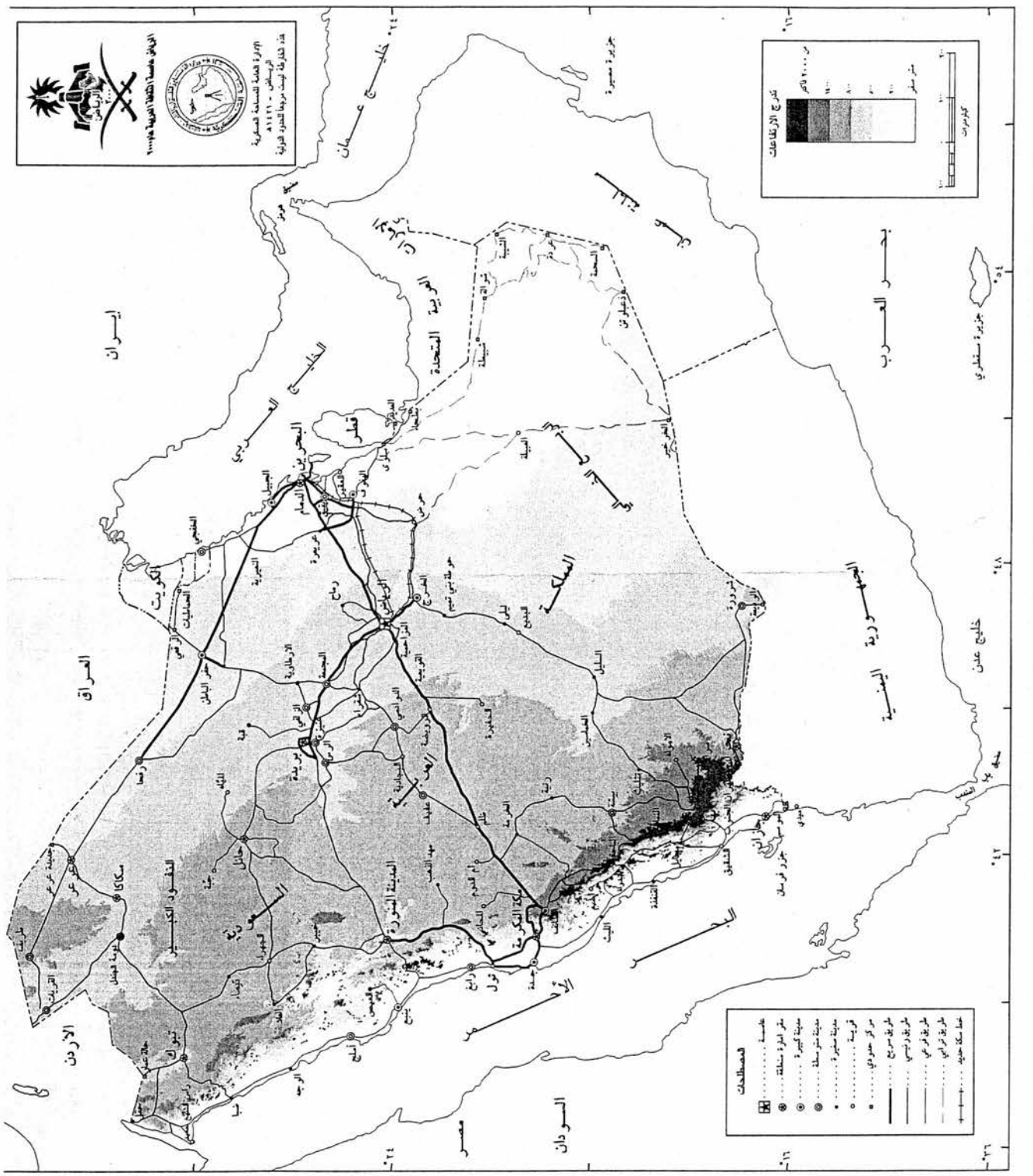
Map 2 (contin.)



Source: Schofield's map, see book: Tensions in Arabia: The Saudi-Yemeni Fault Line, Baden-Baden (2000). PP. 50-51

Map 2.17

Map 2.18


المملكة العربية السعودية
العراق
الكويت
قطر
البحرين
الإمارات العربية المتحدة
عمان
اليمن
الجمهورية اليمنية
إيران
الأردن
مصر
السودان
الخليج العربي
بحر العرب
خليج عدن
الدولة مصلحة الخدمة العامة ١٤١٨هـ
الإدارة العامة للمساحة العسكرية
الرياض ١١١٦١
هذه الخارطة ليست مزودة للتداول الدولي
مقياس الارتفاعات
المصطلحات

MAP C.I.

PHYSICAL POLITICAL MAP

خريطة طبيعية سياسية

THE ARABIAN PENINSULA

الجزيرة العربية

Done by Muhammed Abd-Al-Mun'im Al-Hassan in the Secondary School for the preparation of Arab Missions in Mekkah

عمل محمد عبد المنعم الأستاذ بمدرسة تحضير البعثات الثانوية بمكة المكرمة

البحر الأبيض المتوسط — سوريا — العراق — الكويت — البحرين — قطر — الإمارات العربية المتحدة — سلطنة عمان — اليمن — المملكة العربية السعودية — مصر — السودان — إريتريا — الصومال البريطاني — الصومال الإيطالي — الصحراء العربية الكبرى — الربع الخالي — نجد — الحجاز — البحر الأحمر — الخليج العربي — خليج عمان — باكستان — المحيط الهندي

LEGEND

الاشارات الاصطلاحية

- العواصم
- المدن الكبيرة أو الشهيرة
- المدن الصغيرة
- الحدود السياسية
- طرق القوافل والسيارات
- السكك الحديدية
- الأنهار
- طرق الملاحة (المسافة بالكيلومتر)
- الجبال

Scale 1:5,000,000

مقياس الرسم ١: ٥,٠٠٠,٠٠٠

قررت مديرية المعارف بالمملكة العربية السعودية استعمال هذه الخريطة بمدارسها

This map is prescribed by the Directorate of Public Instruction in the Saudi Arabian Kingdom for use in the schools

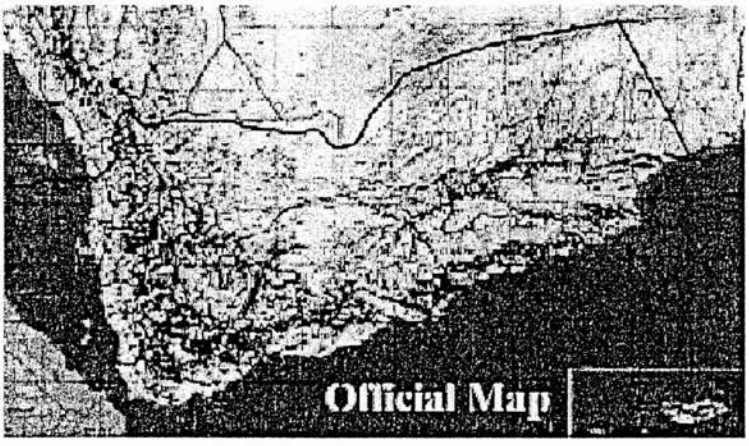
طبع على نفقة مطبعة الاقتصاد بمكة المكرمة

Printed at the expense of the Iqtisad Printing Press in Mekkah

مطبعة مصطفى البابي الحلبي وأولاده

ing Press of Mustafa Al-Babi Al-Halabi and sons in Cairo

2.20 Yemeni Official Map post-the 2000 Treaty of Jeddah



Source: Yemen Times 26 June 2000 see
http://www.yementimes.com/00/iss26/front.htm

راجع تعليمات الأسفار الملاحة للأمور الفنية البريطانية (الكتاب المعلومات وحدول الأضواء وتعليمات أخرى واردة على هذه الخريطة البحث عن دور الخريطة والاصطلاحات انظر خارطة رقم ٤٩)

رأس فرسان

البحر الأحمر

المملكة العربية السعودية
المؤسسة العامة للموانئ

البحر الأحمر
ساحل المملكة العربية السعودية

جزر فرسان

مقياس الرسم ١ : ١٥٠,٠٠٠ (٥٨ ' ٦٦)

الأعماق : بالأمتار منخفضة عن المستوى الأدنى لمستوى البحر

الارتفاعات : بالأمتار نسبية لمتوسط سطح الماء

العسقط : مركاتور

الوقع : الإحداثيات) ممثلة وفق النظام الجيوديسي العالمي ١٩٧٤م

تنبيه

الإنتاج

تمت إعادة إنتاج الخارطة بعد تجميع معلوماتها بالمجلس الآتي ذكرة الخدمة العسكرية بوزارة الدفاع والطيران والمفتشية العامة - الرياض المملكة العربية السعودية عام ١٤١٨ هـ.

المراجع

المعلومات الواردة في هذه الخارطة مستقاة من المسح البحري الشامل الذي أجرته المؤسسة العامة للموانئ عام ١٤١٨هـ ، وأعمال المسح الاستكمالية لقطاعي ميناثي جزان وفرسان عام ١٤٠٢هـ بوساطة البحرية والبريطانية.

مصادر المعلومات / مخطط التجميع

١ - خرائط المسح البحري لساحل المملكة طبع البحر الأحمر ١٤٠٢هـ ١٠ ، ٠٠٠
٢ - خارطة المسح البحري ١٤٠٢هـ ١ : ١٥٠,٠٠٠
٣ - خارطة رقم ٤٩ لدفاع الأمريكية رقم ١٢٥٦ ١ : ١٠,٠٠٠

الإسقاط ٢٣ (شمالية / ١٩٦٦م) الزيادة حوالي ١ ستوي

خط الطول ٤٢ شرقاً لخط جرينتش

المملكة العربية السعودية
وزارة النقل

خارطة الطرق

مقياس الرسم ١ : ٣,٠٠٠,٠٠٠

KINGDOM OF SAUDI ARABIA
MINISTRY OF TRANSPORT

ROAD MAP

Scale 1 : 3,000,000

Al Khafji Bridge (Al Riyadh) — جسر الخفجي (الرياض)

أنتجت وطبعت بالإدارة العامة للمساحة العسكرية
وزارة الدفاع والطيران والمفتشية العامة - الرياض
المملكة العربية السعودية ١٤٢٤ هـ

Produced and Printed by The General Directorate of Military Survey
Ministry of Defence and Aviation, Riyadh,
Kingdom of Saudi Arabia, 2003.

جدول المسافات الكيلومترية بين أواسط المدن الرئيسية بالمملكة

TABLE OF DISTANCES IN KILOMETRES BETWEEN MAJOR CITY CENTRES

This map is not considered as a reference for international boundaries

لاتعتبر هذه الخارطة مرجعاً للحدود الدولية

Lambert conformal conic projection standard parallels 17° and 33°

مسقط لامبرت المخروطي المطبق العرض الأساسيين ١٧° و ٣٣°

حقوق الطبع محفوظة للإدارة العامة للمساحة العسكرية
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الطبعة الرابعة ١٤٢٤ هـ
Fourth edition 2003
رقم الإيداع ٢٩٥٩ / ٢٣
Legal Deposit No. 2959/22

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